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June 18, 2008

By Hand Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *New York Independent System Operator, Inc.*, Docket No. OA08-13-001, Order No. 890 Transmission Planning Compliance Filing -- Cost Allocation for Regulated Reliability Projects

Dear Ms. Bose:

In compliance with Order No. 890,[1] the Commission's Final Rule on open access transmission tariff ("OATT") reform, the December 6, 2007 "Notice of Extension of Time" issued in Docket Nos. RM05-17-000 and RM05-25-000,[2] and the June 3, 2008 "Notice of Extension of Time" issued in Docket Nos. OA08-52-000, *et al.*, the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners ("NYTOs")[3] respectfully submit additional revisions to Attachment Y and other provisions of its OATT to incorporate a cost allocation methodology and a cost recovery process for regulated reliability projects that may be proposed and constructed pursuant to the NYISO's Comprehensive Reliability Planning Process ("CRPP")[4]. This submission supplements the NYISO's December

[1] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, III FERC Stats. & Regs., Regs. Preambles ¶ 31,131 (2007), *reh'g pending*. In accordance with the Commission's Order No. 890 requirements, the NYISO submitted non-planning revisions to its OATT on October 11, 2007 in the above-captioned proceeding.

[2] *See Notice of Extension of Time*, Docket Nos. RM05-17-000 and RM05-25-000 (December 6, 2007).

[3] For purposes of this joint request, the NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation d/b/a/ National Grid, the Long Island Lighting Company d/b/a LIPA, and the New York Power Authority.

[4] Capitalized terms in this filing letter are defined terms in the NYISO's OATT and Market Administration and Control Area Services Tariff.

7, 2007 compliance filing in this docket, which proposed to incorporate into Attachment Y a local transmission planning process and an enhanced economic planning process, as well as updates to other aspects of the NYISO's existing reliability planning process ("December 7 Filing") in accordance with the requirements of Order 890.

The proposals in the December 7 Filing addressed all nine planning principles mandated by Order No. 890 except for cost allocation and cost recovery for regulated reliability upgrades. Because the NYISO's Commission-approved CRPP treats all resources comparably– transmission, generation, and demand response resources are eligible for consideration as regulated reliability solutions -- there were unique issues for the NYISO and the NYTOs to resolve. Based upon the need to address outstanding state jurisdictional issues related to cost allocation and recovery for non-transmission regulated reliability projects, the Commission granted the NYISO and the NYTOs an extension of time until June 4, 2008 to address cost allocation and cost recovery for regulated transmission reliability projects and to allow the state agencies and entities to resolve such issues for non-transmission regulated reliability projects, so that comparable treatment would be provided for all regulated resources. The Commission subsequently granted an additional 14-day extension, until June 18, 2008, to permit the NYISO to put together a filing that accurately reflects a consensus among the NYTOs and the New York Public Service Commission ("NYPSC") that was reached only days before the June 4 deadline.[5] The additional time was also used to provide an opportunity for other stakeholders to review and submit input. In this filing, the NYISO provides proposed tariff sheets that would allocate and recover the costs of reliability upgrades in a manner that is just, reasonable, and non-discriminatory, and that respects the existing jurisdictional boundary between the Commission and the NYSPSC.

I. Documents Submitted

1. This filing letter;

2. Clean version of OATT Attachment Y reflecting the NYISO's cost allocation methodology for regulated reliability projects and certain additional amendments to Attachment Y concerning cost allocation and cost recovery, and matters related to the Commission's December 6, 2007 Notice of Extension of Time and the Commission's June 3, 2008 further Notice of Extension of Time ("Attachment I");

3. Redlined version of OATT Attachment Y reflecting the changes proposed to the Attachment Y compared with the tariff sheets in the December 7 Filing ("Attachment II");

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[5] *See Notice of Extension of Time*, Docket No. OA08-52-000 (June 3, 2008).

4. Clean and redlined versions of the NYISO OATT reflecting the addition of new Section 7C.0. ("Attachment III").

5. A clean revised unsigned Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs ("NYTO-NYISO Reliability Agreement") ("Attachment IV");

6. Redlined version of the revised unsigned Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Reliability Planning Process for Reliability Needs as compared with the unsigned agreement of the same title accepted for filing by FERC in 2005 ("Attachment V");

7. Rate Mechanism for the Recovery of the Reliability Facilities Charge ("RFC"), to be a new NYISO Rate Schedule No. 10 to the NYISO OATT ("Attachment VI"); and

8. The *Policy Statement on Backstop Project Cost Recovery and Allocation* issued by the New York Public Service Commission on April 24, 2008 in Case No. 07-E-1507, entitled "Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process" ("Attachment VII").

II. Background

A. The December 7 Filing

In the December 7 Filing, the NYISO submitted revisions to its existing CRPP intended to comply with the planning principles contained in Order No. 890.[6] The proposed revisions were incremental in nature, and built on the core processes established in the existing CRPP, expanding the economic planning process in accordance with the requirements of Order 890.

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[6] In order to promote the construction of additional transmission infrastructure, Order No. 890 required transmission providers to adopt as part of their OATTs, *inter alia*, an open, transparent, and coordinated planning process at both a regional and a local level. *See* Order No. 890 at P 435. As part of that requirement, transmission providers were required to "submit, as part of a compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the planning principles and other requirements in this Final Rule." *Id.* at P 437. Recognizing that some transmission providers -- particularly Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs") -- already have in place substantial planning processes, the Commission held that "[i]n the alternative, a transmission provider (including an RTO or an ISO...), may make a compliance filing in this proceeding describing its existing coordinated and regional planning process, including the appropriate language in its tariff, and show that this existing process is consistent with or superior to the requirements in this Final Rule." *Id.* The December 7 Filing constituted the NYISO's compliance filing with respect to these requirements.

As the NYISO explained in the December 7 Filing, its existing planning processes are consistent with the fundamental planning principles articulated by the Commission in Order No. 890. The only element that the December 7 Filing did not cover was cost allocation and recovery for regulated reliability projects. As the NYISO and the New York Transmission Owners explained in their November 30, 2007 request for extension of time -- which the Commission subsequently granted -- cost allocation and recovery for such projects required the resolution of certain issues related to the jurisdiction of the NYPSC over cost recovery for generation and demand response options, both of which may be selected as regulated solutions to resolve Reliability Needs identified through the NYISO's Comprehensive Reliability Planning Process.

1. The NYISO's Existing Comprehensive Reliability Planning Process

The existing CRPP, which forms the basis for the expanded planning proposal that the NYISO submitted to the Commission in the December 7 Filing, establishes a multifaceted, open, and transparent process to identify transmission upgrades and other types of resources needed to meet Reliability Needs on the New York Bulk Power Transmission Facilities ("BPTFs").[7] This process encourages the deployment of market-based solutions from Market Participants, but also requires the development of regulated solutions by designated Responsible Transmission Owners as a "backstop" if the market-based proposals do not solve the identified Reliability Needs in a timely manner. The NYISO's unique, "all source" reliability planning structure means that it evaluates all potential solutions -- transmission, generation, or demand response -- on a comparable basis.

The CRPP is a two-step process built around two documents -- the Reliability Needs Assessment ("RNA") and the Comprehensive Reliability Plan ("CRP"). The starting point in the process is the development by the NYISO (with Market Participant input) of the RNA. That assessment identifies conditions that are violations or potential violations of established Reliability Criteria and provides an analysis of historic congestion costs. The analyses performed by the RNA cover a ten-year time horizon, and identify a Responsible Transmission Owner (or Owners) for each identified Reliability Need . The needs are expressed as "compensatory megawatts " (MW) of resources that are needed by zone. Transmission, generation and demand response resources may be proposed to fulfill the compensatory MW needs identified. The RNA is reviewed by the NYISO's stakeholder committees and approved by the NYISO's Board of Directors.

For each identified Reliability Need, the Responsible Transmission Owner(s) must propose a regulated solution -- which may be transmission, generation, or demand response-- to serve as a "backstop" to meet the Reliability Need, as well as an estimate of the time necessary

[7] The NYISO determines the reliability of the New York BPTFs in accordance with the rules of the North American Electric Reliability Corporation ("NERC"), the Northeast Power Coordinating Council, Inc. ("NPCC"), and the New York State Reliability Council ("NYSRC").

to implement it. At the same time, the NYISO requests and evaluates market-based responses from developers in the marketplace, as well as alternative regulated responses.

These evaluations of the backstop solutions and the market-based and alternative regulated responses are incorporated into the draft CRP, which is circulated to stakeholders and the NYISO's Independent Market Advisor for review and comment. The CRP analyzes the market-based solutions to determine if they are viable and will fulfill the identified Reliability Needs. On a parallel track, the CRP evaluates the viability and sufficiency of regulated reliability backstop solutions that the NYISO can call upon if market-based solutions are insufficient to fulfill reliability needs. The CRP also evaluates alternative regulated reliability solutions proposed by Other Developers, including a TO not acting in the capacity of a Responsible TO. In the CRP the NYISO further determines if sufficient market-based solutions will be available to meet the Reliability Needs over the ten-year planning period, or if necessary, the Responsible TOs should proceed with governmental approvals and undertake construction of a backstop regulatory reliability solution. The CRP then sets forth a reliability plan and evaluates plan risk factors for the ten-year planning period. Once it has been fully vetted by the NYISO's stakeholders, the CRP is submitted to the Board of Directors for approval. The Independent Market Adviser then comments on the CRP to the NYISO Board to identify any failure in the NYSO's market rules to properly encourage investment in market-based reliability projects. The Board may approve the CRP as submitted, approve it with modifications, or remand the CRP to the stakeholder process with a request for further analysis or revisions.

2. Revisions Proposed by the December 7 Filing

In response to Order No. 890, the December 7 Filing proposed to adopt an expanded planning process -- known as the Comprehensive System Planning Process ("CSPP") -- that contains three major components; (i) local transmission planning; (ii) regional reliability planning, and (iii) regional economic planning. This three-part planning process will be conducted over a two-year period, rather than the one-year cycle used in the current CRPP.

Each two-year cycle will begin with the Local Transmission Planning Process ("LTPP") of the NYTOs. The current CRPP outlined in Attachment Y will be conducted, with certain modifications, for the New York bulk power system building upon the information contained in the Local Transmission Plans ("LTPs") of the NYTOs and other data gathered during the input phase of the CRPP. As noted above, an RNA, a solutions phase, and a CRP are then conducted for the New York Control Area as a whole to complete the reliability planning process. Thereafter, an economic planning process is conducted in the Congestion Assessment and Resource Integration Study ("CARIS"). The CARIS will consist of a series of three congestion studies developed with Market Participant input. The NYISO will also conduct additional studies requested by individual Market Participants at their expense. Following completion of the CARIS, a new 24-month cycle will begin.

As the NYISO explained in the December 7 Filing, the costs of economic upgrades will be allocated based on a "beneficiaries pay" approach under which those entities that economically benefit from a project will bear its costs, and the cost allocation among them will be based upon their relative economic benefit. The proposed economic cost allocation and cost recovery mechanism under the NYISO Tariff will apply only if a super-majority of a project's beneficiaries -- 80 percent of the weighted vote of the beneficiaries -- agree that an economic project should proceed. The NYISO's proposed tariff revisions with respect to economic upgrades will fully complement the existing, Commission-approved reliability planning process, and will encourage Market Participants to advance, on a voluntary basis, market-based proposals designed to provide the incentive for transmission construction to reduce transmission congestion.

B. Extension of Time to Address Cost Allocation for Regulated Reliability Projects

1. Jurisdictional Issues

As outlined above, FERC granted the NYISO and the NYTOs an extension until June 4, 2008 so that they, in conjunction with the NYPSC, could attempt to reach agreement on cost allocation and cost recovery mechanisms for generation and demand response reliability solutions under state law.[8] The parties sought to reach agreement on a common cost allocation methodology for generation, demand response and transmission solutions that would be used under state and federal law to ensure comparable treatment of all types of reliability solutions. For this reason, the December 7 Filing did not address cost allocation or cost recovery either for regulated transmission or non-transmission reliability projects.

The state jurisdictional issues raised by the NYISO's cost allocation mechanism arise because the NYISO planning process encourages generation and demand response projects to be considered along with transmission upgrades as potential solutions to reliability needs. . The NYPSC has asserted jurisdiction over the investor-owned NYTOs with respect to recovery of non-transmission upgrades, while the Commission has jurisdiction over cost recovery for transmission upgrades. Since the Long Island Power Authority ("LIPA") and the New York Power Authority ("NYPA") are not subject to the NYPSC's rate jurisdiction, and are generally non-jurisdictional to FERC, the unique needs of these important New York Transmission Owners raised additional issues that had to be resolved.

The challenge for the NYISO, the NYTOs, and the NYPSC was to ensure comparable treatment for all resource types, and for all utilities, whether or not they were subject to FERC or NYPSC jurisdiction. Such comparable treatment among resource types and NYTOs is essential

[8] As also noted above, the Commission subsequently granted an additional extension until June 18, 2008 in order to permit the NYISO to reduce to writing a consensus reached by the parties only days before the June 4 deadline.

to ensuring that there is no undue discrimination against the use of generation or demand response resources in comparison with transmission solutions. Otherwise, an uneven process would result under which the selection of generation or demand response solutions could be discouraged. However, developing a non-discriminatory process was difficult given that jurisdiction over cost allocation and recovery is divided among FERC (with respect to transmission upgrades), the NYPSC (with respect to non-transmission upgrades by NYTOs other than LIPA or NYPA), and LIPA and NYPA. It required agreement among all the relevant parties regarding the manner in which costs of reliability upgrades would be allocated and recovered. It was this need for an agreement that prompted the NYISO and NYTOs in December 2007 to seek an extension of the original FERC filing deadline with respect to the treatment of cost allocation and cost recovery for regulated reliability projects.

Attachment Y of the NYISO's tariff, which was originally approved by the Commission in December 2004, provided a starting point for the discussions over harmonizing the federal, state, and LIPA and NYPA cost allocation and recovery mechanisms. Attachment Y currently provides that costs related to transmission projects will be recovered under the NYISO's tariff, and that regulated non-transmission reliability project costs will be recovered by the NYTOs in accordance with the provisions of New York Public Service Law[9]. Although the tariff states that the NYISO will make a FERC filing for cost recovery for transmission projects by LIPA or NYPA, upon their request, it does not address cost recovery or cost allocation for generation and demand response projects.[10]

2. The NYPSC's Electric Resource Planning Proceeding and Policy Statement

In December 2007, the NYPSC commenced a three-part Electric Resource Planning Proceeding ("ERP") intended, in part, to address the cost allocation and recovery issues within the NYPSC's jurisdiction.[11] The first phase of the ERP was designed to address allocation and recovery of costs of non-transmission regulated reliability upgrades. The second phase, which is ongoing, is intended to address the selection of the appropriate regulated reliability project once the NYISO has determined -- under the CRPP -- that a regulated solution is needed. The third phase is intended to design and implement a long-range electricity infrastructure planning process for the State of New York.

Phase I of the PSC proceeding failed to achieve a consensus on a cost allocation methodology for non-transmission projects. In an effort to produce a compromise, the DPS Staff introduced a refinement to the original proposal -- to allocate costs in the same way that

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[9] OATT, Attachment Y, § 11.0 (c), (d).

[10] OATT, Attachment Y, § 11.0 (b).

[11] *See* Case 07-E-1507, Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, *Policy Statement on Backstop Project Cost Recovery and Allocation* (April 24, 2008).

the NYISO allocates responsibility for meeting installed capacity ("ICAP") requirements under the ICAP provisions in its tariff. In the end, consensus was not achieved and the DPS Staff recommended adoption of its alternative cost allocation methodology.

The first phase of the PSC proceeding also dealt with the issue of how the costs of non-transmission regulated reliability projects should be recovered -- that is, through the NYISO tariff only, through a combination of the NYISO tariff and an NYPSC mechanism involving the NYTOs subject to NYPSC jurisdiction, or through some other mechanism. The NYTOs favored an approach under which all costs would be recovered through the NYISO tariffs, including costs of non-transmission regulated reliability upgrades.[12] DPS Staff, in turn, favored an approach under which the costs of non-transmission regulated reliability projects would be recovered through a mechanism to be determined by the NYPSC. Under the staff proposal, LIPA and NYPA would be incorporated into the allocation and recovery of non-transmission regulated reliability upgrade costs through an agreement with the NYPSC. Although other parties suggested additional mechanisms, these two approaches were the primary ones considered by the DPS Staff. Once again, there was no consensus, and the DPS Staff recommended a state mechanism for cost recovery of regulated non-transmission reliability projects.

In a Policy Statement issued on April 24, 2008, the NYPSC accepted its staff's recommendations on both cost allocation and cost recovery.[13] The NYPSC echoed concerns raised by the staff about the jurisdictional implications of permitting costs of non-transmission reliability upgrades to be recovered at FERC through the NYISO's tariffs, and thus adopted the staff's recommendation establishing a state process for the recovery of the costs of non-transmission regulated projects. On the issue of cost allocation, the Policy Statement adopted the DPS Staff's proposal, but noted that if the NYTOs could develop a new consensus methodology, then the NYPSC would consider revising its adopted methodology in order to ensure comparable treatment for both transmission and non-transmission resources. The concerns regarding LIPA and NYPA and their ability to participate in a state process were unresolved by the Policy Statement, and discussions continued among those parties.

The NYTOs and the NYPSC, with the assistance of the NYISO, continued to negotiate cost allocation issues after the release of the Policy Statement, and -- only a few days before the June 4, 2008 deadline for the NYISO to submit its compliance filing -- finally arrived at a consensus regarding allocation of both transmission and non-transmission regulated reliability upgrade costs. Similarly, on June 2, 2008, the NYISO was informed by LIPA and NYPA that they had reached an agreement with the NYPSC that recovery of the costs of non-transmission

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[12] Under this approach, a non-transmission regulated reliability project would be submitted first to the NYPSC for its approval, and then would be submitted to FERC for cost recovery through the NYISO's tariffs.

[13] *See* Case 07-E-1507, Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, *Order Initiating Electric Reliability and Infrastructure Planning* (December 24, 2007).

regulated reliability projects undertaken by either LIPA or NYPA will proceed under a state law mechanism such as a memorandum of understanding (MOU) to be executed by LIPA, NYPA and the PSC. The Commission then granted an extension to the NYISO until June 18, 2008 in order to finalize its compliance filing reflecting these recent agreements.

Over the course of the last two weeks, the NYISO and the TOs have reduced to writing the agreements on cost allocation and cost recovery and other amendments to Attachment Y. The proposed tariff amendments, including tariff sheets governing cost allocation and recovery for transmission solutions, a rate schedule and a revised agreement among the NYISO and the TOs to undertake the CRPP, were circulated to the NYISO stakeholders at the Electric System Planning Working Group ("ESPWG"). The NYISO solicited written comments from the stakeholders. In addition, a meeting of the ESPWG was held on June 11 to review the documents that would constitute the filing. Revised documents were then circulated to the members of the ESPWG, further comments were received, and the NYISO incorporated those comments where agreement could be reached.

III. Proposed Cost Allocation Methodology for Regulated Reliability Projects

A. Cost Allocation for Regulated Transmission Projects

The NYTOs have developed a consensus cost allocation methodology that is applicable to all reliability upgrade projects, and that builds upon both the methodology adopted by the NYPSC and previous methodologies discussed in the NYISO stakeholder process and presented to FERC in previous Order No. 890 technical conferences. The methodology reflects a beneficiaries pay approach that was developed to be (1) consistent with the compensatory MW approach that NYISO stakeholders are familiar with from the NYISO CRPP, (2) consistent with existing cost allocation mechanisms in the current NYISO markets, and (3) capable of being implemented by the NYISO.[14] The staff of the New York Department of Public Service has indicated that it has no objection to this methodology, and that it will present this methodology to the NYPSC for review and adoption with respect to non-transmission regulated reliability projects.

The cost allocation methodology for transmission regulated reliability projects, reflected in amended Section 14.2 of Attachment Y, is based on a three-step approach that focuses on whether a need is a locational need, a statewide need, or a bounded region need. The needs are determined in accordance with a standard that requires sufficient resources to ensure that the New York Control Area has a loss-of-load expectation ("LOLE") of less than 0.1 days per year. As outlined below, costs are allocated based on a "beneficiaries pay" approach.

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[14] The cost allocation formula will be applicable to all regulated reliability projects triggered prior to January 1, 2016 and will be revisited in the NYISO's stakeholder process prior to its expiration. The NYISO will make a filing before the expiration date to continue this methodology or to submit an alternative for the Commission's consideration.

Step one of the methodology focuses only on those areas within the NYCA that have Locational Capacity Requirements ("LCRs") for Installed Capacity -- currently, New York City and Long Island. The costs of any upgrades in those areas required to satisfy locational reliability requirements are allocated solely to LSEs in those LCR zones.

Step two of the methodology involves the running of the NYISO's reliability simulation model using the "free flow method" -- that is, with all internal transmission constraints relaxed -- to determine whether an unconstrained New York Control Area ("NYCA") would have an LOLE of less than 0.1 days per year. If not, the reliability upgrades necessary to bring the NYCA within the reliability threshold would be allocated to all NYCA load zones based on their contribution to the NYCA coincident peak load. The LCR zones receive credit for meeting their locational capacity requirements under this allocation. In the calculation of the load-ratio share, the localized upgrades that the ratepayers in the LCR zones already have paid for are used to offset those zones' total cost responsibility for these types of statewide reliability upgrades. If step two is invoked, the cost allocation process will end with this step.

If step two demonstrates no reliability needs using the free flow method, then the NYISO would move to step three -- the application of the Binding Interface Test. Step three identifies binding transmission constraints that are preventing sufficient capacity from being deliverable throughout the NYCA. Under this step the NYISO would run the Binding Interface Test, once again accounting for any compensatory MWs added in step one, and determine what zones were within Bounded Regions (*i.e.,* those zones with binding interfaces as determined by the Binding Interface Test). The NYISO would resolve any identified issues by adding compensatory MWs to the Bounded Region that has the greatest impact on reducing the LOLE. The NYISO would iteratively run the Binding Interface Test, determining new Bounded Regions as applicable, and add additional compensatory MWs to the Bounded Regions based on greatest NYCA LOLE reduction on a per MW basis until sufficient compensatory MWs are added for the NYCA to reach 0.1 LOLE. The compensatory MWs are allocated to the applicable Bounded Regions, isolated as a result of the constrained interface limits, based on their NYCA coincident peaks. Allocation to locational zones will take into account their locational requirements.

B. Cost Allocation and Cost Recovery for Non-Transmission Regulated Reliability Projects

As outlined above, the NYPSC has determined that cost allocation applicable to non-transmission regulated reliability projects constructed by NYTOs other than LIPA or NYPA will be pursuant to a state mechanism. Although the NYPSC has adopted a cost allocation mechanism that differs from the consensus methodology described above, it is the understanding of the NYISO and the NYTOs that the DPS Staff does not object to the consensus methodology for transmission projects outlined in this filing, and that the staff will present that methodology to the NYPSC Commissioners for their consideration and adoption for non-transmission regulated reliability projects. The NYISO and the NYTOs also understand that, upon approval by the

FERC, the NYPSC will consider revising its previously-adopted cost allocation rules accordingly to ensure that there is no discriminatory treatment of either non-transmission or transmission regulated reliability upgrades. Finally, as also noted above, it is the NYISO's understanding that LIPA, NYPA and the NYPSC have reached agreement that recovery of the costs of non-transmission regulated reliability projects by either LIPA or NYPA will proceed under a state law mechanism, such as an MOU to be executed by LIPA, NYPA, and the NYPSC. Similarly, the NYISO understands that the state law cost recovery mechanism will reflect a comparable approach to that contained in this compliance filing for regulated transmission reliability projects.[15] For these reasons, the NYISO and NYTOs do not include in this filing any tariff revisions governing cost allocation or cost recovery for non-transmission regulated reliability projects.

IV. Revised Agreement Between the NYISO and the NYTOs on the Comprehensive Planning Process for Reliability Needs ("The NYISO-TO Reliability Agreement")

The NYISO and NYTOs also submit with this filing the revised NYISO-TO Reliability Agreement, which outlines the NYTOs' rights and obligations associated with the new planning process, including the obligation to propose and construct regulated backstop transmission projects at the request of the NYISO to address reliability needs identified through the reliability planning process. This agreement is very similar to the agreement that the NYISO submitted in its original filing of the tariff sheets implementing the CRPP in Docket No. ER04-1144, which was accepted by the Commission, and has been updated to reflect the resolution of the state issues by the NYPSC. The primary changes from the agreement filed in Docket No. ER04-1144 are twofold. First, the NYTOs' obligation under this Agreement to propose regulated backstop reliability projects is limited to the proposal of transmission upgrades only. The NYTOs' obligation to proceed with a backstop solution is conditioned upon the applicable Transmission Owner(s) receiving full recovery of all reasonably incurred costs related to the project in wholesale and retail rates. Second, the NYTOs may also voluntarily propose regulated non-transmission upgrades subject to state jurisdiction to fulfill the Reliability Needs identified in the CRPP, subject to a comparable rate recovery mechanism at the state level. These changes reflect the NYPSC Policy Statement regarding how non-transmission regulated reliability upgrade costs will be allocated and recovered.

The NYTO-NYISO Agreement revises the existing Agreement Between New York Independent System Operator and Transmission Owners, and is necessary to fully implement the backstop reliability planning process that is integral to the NYISO's revised CSP process.

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[15] The adoption of this methodology by the NYPSC, and the incorporation of a comparable methodology into the LIPA and NYPA MOUs, is important because it will ensure that the applicable cost allocation methodology treats both transmission and non-transmission projects in a comparable manner, and does not discriminate against any resource option. It should be noted also that the NYPSC Policy Statement determined that costs of non-transmission projects should be recovered under a state mechanism, but it did not establish specific cost recovery procedures.

Once the Commission accepts the NYTO-NYISO Reliability Agreement, the NYISO and the NYTOs will execute it.

V. Proposed Rate Schedule 10 for the Recovery of the Reliability Facilities Charge

The NYISO and NYTOs propose a new Rate Schedule 10, entitled Rate Mechanism for the Recovery of the Reliability Facilities Charge ("Rate Mechanism"), which establishes the manner in which the RFC -- that is, the rate charged by the NYISO for the recovery of costs associated with regulated transmission reliability projects -- will be developed, filed at the Commission, and charged to NYISO customers. The Rate Mechanism provides that each NYTO shall have on file at FERC the rate treatment that will be used to derive and determine the revenue requirement to be included in the RFC. The NYISO will collect revenues from beneficiaries and distribute them to the project's developers.

For NYTOs other than LIPA, construction of the regulated transmission project will commence once the applicable NYTO receives all necessary federal, state, and local approvals, including FERC acceptance of the rates associated with the project. Upon completion of the project, either the NYTO or the NYISO will make an informational filing with FERC to provide the final project cost and resulting revenue requirement, and cost recovery will commence under the formula set forth in Section 3.0 of the Rate Mechanism.

That formula involves a four-step process under which total costs are determined for each zone, and then allocated to LSEs within those zones. Step one involves the allocation of total dollars associated with each transmission reliability upgrade to each zone in accordance with the methodology set forth in Section 14.2 of Attachment Y. Step two requires the calculation of a per-megawatt-hour ("MWh") rate for each zone (by dividing the aggregate monthly dollars allocated to that zone by the aggregate monthly withdrawals for that zone). Step three involves the calculation of a monthly charge for each LSE in each zone, while step four involves the calculation of a monthly charge for each LSE across all zones. The resulting charge is imposed on a per MWh basis. Some parties believe that a per MW charge is a superior cost recovery methodology, and others do not. The NYISO has expressed its willingness to analyze the costs and resources required to implement a per MW charge, and to bring this issue back to the stakeholder process for discussion.[16]

For LIPA, the process is similar, but the rate recovery will be accomplished in two steps. First, the costs of LIPA projects to be allocated to customers in the Long Island Transmission District will be collected directly from those customers by LIPA, and will be filed as part of the NYISO tariff for informational purposes only. This tracks the manner in which the Transmission Service Charge ("TSC") under Attachment H of the NYISO OATT is currently collected as applied to LIPA customers. Second, to the extent that costs of a LIPA regulated transmission

[16] Each of the parties reserves the right to submit separate filings on this issue.

upgrade are allocable to customers outside of the Long Island Transmission District, the NYISO will file those costs for Commission review under the same "comparability" standard as is applied to review of changes in LIPA's TSC under Attachment H. LIPA will intervene in support of such filings at the Commission, and will be responsible for resolving all concerns that might be raised in related proceedings. These costs will be recovered pursuant to a separate LIPA RFC charge under the NYISO tariff.

Finally, proposed Rate Schedule 10 specifies that the RFC will be the mechanism under which the costs of alternative regulated transmission reliability solutions will be recovered by either a Transmission Owner or Other Developer. Alternative regulated transmission projects are transmission upgrades that are approved by the appropriate state agencies as the preferred solution. Such projects are proposed in addition to the regulated backstop reliability projects that Responsible Transmission Owners are required to propose to address reliability needs. These alternative regulated transmission projects must be selected as the preferred solution by the appropriate state regulatory agencies in order to be eligible for cost recovery.

VI. Additional Amendments to the NYISO OATT and Attachment Y

The NYISO and NYTOs also propose several additional amendments to the NYISO OATT and Attachment Y necessary to implement the cost allocation and recovery mechanism proposed herein. Specifically, the NYISO is proposing to add a new Section 7C.0 of the NYISO OATT, and to revise Sections 7.1, 8.7, 9.4, 13.6, and 16 of Attachment Y.

A. Section 7C.0 of the NYISO OATT

The NYISO and NYTOs propose to add new Section 7C.0 to the NYISO OATT to permit the NYISO to charge and recover the RFC from Load Serving Entities, by zone. The billing of the RFC is to be based on the cost allocation mechanism in Section 14.2 of Attachment Y, and on the cost recovery contained in the proposed Rate Schedule 10, which is described above. The addition of Section 7C.0 is necessary to ensure that the NYISO has tariff authority to bill and collect the RFC, and to transmit revenues to the project developer.

It should be noted that the mechanism adopted in this filing for recovery of regulated transmission reliability projects does not include, at this time, allocation of costs to export and wheel-through transactions. The allocation of reliability upgrade costs to these transactions was the source of significant discussions with the NYISO's stakeholders, and presents a number of complex issues including concerns regarding potential seams issues. There has been no clear consensus in the NYISO's stakeholder process on allocation of regulated reliability project costs to export and wheel-through transactions, and the NYISO and NYTOs therefore do not include in this filing an allocation of such costs to those transactions. The NYISO intends to continue discussion of this issue with its stakeholders and, pending the results of those discussions, may file a proposal with the Commission at a later date. The absence of assignment of costs to export and wheel-through transactions will not prevent implementation of a regulated reliability

transmission solution. Moreover, the NYISO and NYTOs believe that there is adequate time to resolve this issue and make a further filing because the current draft 2008 Comprehensive Reliability Plan finds that there are more than sufficient market-based projects proceeding to fulfill the identified Reliability Needs in New York and that there is no need for a backstop reliability solution at this time.

B. Section 7.1 of Attachment Y

The NYISO and NYTOs propose to amend Section 7.1 of Attachment Y to clarify that a Transmission Owner's obligation to propose and implement regulated backstop solutions under the NYISO OATT is limited to regulated transmission solutions, and to provide that when more than one regulated backstop solution is proposed to address a Reliability Need, it is the responsibility of the Responsible Transmission Owner(s) to determine the regulated backstop solution that will proceed following a finding by the NYISO under Section 9.4 of Attachment Y (which governs determinations of the necessity for a regulated solution). This amendment is incorporated as integral to the agreement reached among the NYISO and the NYTOs to proceed with the CRPP. The NYISO and NYTOs respectfully submit that the amendment improves Attachment Y by clarifying the responsibilities of NYTOs with respect to the proposal and implementation of regulated backstop solutions under the NYISO OATT. Finally, the amendment was presented at the ESPWG and the stakeholders did not object.

C. Section 8.7 of Attachment Y

The NYISO and NYTOs propose to add a new Section 8.7 of Attachment Y (and redesignate the existing Section 8.7 as Section 8.8). The new Section 8.7 provides that when the NYISO determines that a regulated backstop solution is necessary, the Responsible Transmission Owner will make a presentation to the NYISO's Electric System Planning Working Group ("ESPWG") on the details, including a non-binding cost estimate, of its regulated backstop solution. It also provides that any proponents of an Alternative Regulated Solution will be given the opportunity to present the details of that project to the ESPWG. This amendment improves Attachment Y by providing a transparent stakeholder forum for presentation and consideration of proposals put forward to address identified reliability needs. Its incorporation in this filing is an integral part of the agreement reached among the NYISO and the NYTOs to proceed with the CRPP. Finally, the amendment was presented at the ESPWG and the stakeholders did not object.

D. Section 9.4 of Attachment Y

The NYISO and NYTOs propose to amend Section 9.4 of Attachment Y to clarify that if the NYPSC or (in the case of upgrades in areas where they are responsible) LIPA or NYPA make a determination that an alternative regulated solution should be implemented instead of a regulated backstop solution and that the regulated backstop solution should not be implemented, the Responsible Transmission Owner will no longer be responsible for addressing the reliability

need with a regulated backstop solution. This amendment improves Attachment Y by clarifying that the NYPSC, or other state agencies, have a central role in determining which regulated reliability upgrades will be constructed in response to a reliability need identified by the NYISO. To the extent that the NYPSC determines that a non-transmission upgrade is preferable to a transmission regulated backstop solution, that determination will be implemented through the state mechanism to be established in accordance with the PSC Policy Statement. This amendment is incorporated in this filing as integral to the agreement reached among the NYISO and the NYTOs to proceed with the CRPP. It was also presented at the ESPWG and the stakeholders did not object to it.

E. Section 13.6 of Attachment Y

To reflect the participation of LIPA and NYPA in the planning and cost allocation processes under Attachment Y, the NYISO and NYTOs propose to amend Section 13.6 of Attachment Y -- which addresses cost recovery of non-transmission reliability projects -- to reference the New York Public Authorities Law, under which LIPA and NYPA operate. Prior to the amendment, Section 13.6 provided that costs "related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law." The amendment adds to the end of that provision the phrase " New York Public Authorities Law, or other applicable state law" in order to reflect the fact that LIPA and NYPA -- as NYTOs with obligations under the revised planning mechanism -- might construct non-transmission upgrades in order to satisfy their obligations, and that the cost of such upgrades will be recovered pursuant to the New York statutes governing their operations. The amendment further states that nothing in this section of the tariff affects the Commission's jurisdiction over wholesale power sales. This amendment was presented to the ESPWG and was revised in accordance with the stakeholders' comments.

F. Section 16 of Attachment Y

The NYISO and NYTOs propose to amend Section 16 of Attachment Y to reflect the fact that costs associated with transmission regulated reliability projects will be recovered in accordance with the Rate Mechanism in Rate Schedule 10, and that cost recovery for backstop projects constructed by NYTOs will be recovered under the provisions of the NYISO-TO Reliability Agreement. The NYISO and NYTOs also propose to amend Section 16 to provide that the costs of non-transmission regulated reliability projects by LIPA and NYPA will be recovered pursuant to the provisions of the New York Public Service Law, the New York Public Authorities Law, and other applicable provisions of state law, and that the cost allocation and recovery mechanisms for regulated non-transmission reliability projects to be adopted by the memorandum of understanding between LIPA, NYPA, and the NYPSC will be comparable to the cost allocation and recovery mechanisms reflected in this filing for regulated transmission reliability projects. This amendment was reviewed in the stakeholder process and was revised in accordance with the comments received.

VII. Effective Date

The NYISO and NYTOs respectfully request that the Commission grant these proposed amendments an effective date of June 18, 2008, the date on which they are being filed. This is consistent with the approach that the NYISO has taken in other compliance filings in response to Order Nos. 890 and 890-A, and with the Commission's orders on those compliance filings.[17]

VIII. Communications and Correspondence

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[17] *See New York Independent System Operator, Inc.*, 123 FERC ¶ 61,134 at P 8 (2008) (accepting the NYISO's initial Order No. 890 compliance filing, which was submitted on October 11, 2008, to be effective on that date).

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IX. Service

The NYISO will electronically send a link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(d) of the Commission's Regulations (18 C.F.R. § 35.2(d) (2007)) to permit it to provide service in this manner.

[18] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2007)) is requested to the extent necessary to permit service on counsel for the NYISO in both Washington, DC and Richmond, Virginia, as well as counsel for the NYTOs listed in Attachment B.

X. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission accept the proposed revisions to Attachment Y, and confirm that the NYISO's existing and proposed planning processes are in compliance with the principles articulated by the Commission in Order Nos. 890 and 890-A .

Respectfully submitted,

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