

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 12, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard, dissenting
David J. Valesky
John B. Maggiore

CASE 20-E-0497 - In the Matter of New York Independent System
Operator, Inc.'s Proposed Public Policy
Transmission Needs for Consideration for 2020.

CASE 18-E-0623 - In the Matter of New York Independent System
Operator, Inc.'s Proposed Public Policy
Transmission Needs for Consideration for 2018.

ORDER ON PETITIONS FOR REHEARING

(Issued and Effective May 16, 2022)

BY THE COMMISSION:

INTRODUCTION

On March 19, 2021, the Public Service Commission (Commission) issued an "Order Addressing Public Policy Requirements for Transmission Planning Purposes" (March 2021 Order) in the above-referenced cases, addressing the Public Policy Requirements proposed by several entities as part of the biennial Public Policy Transmission Planning Process specified under Attachment Y of the Open Access Transmission Tariff (OATT) adopted by the New York Independent System Operator, Inc.

(NYISO).¹ Through the March 2021 Order, the Commission found that the Climate Leadership and Community Protection Act (CLCPA) is driving the need for additional transmission facilities between Long Island and New York City, and therefore constitutes a Public Policy Requirement.² The Commission noted that at least 3,000 megawatts (MW) of offshore wind are expected to be interconnected onto Long Island, which “illustrates an impending [transmission] need for upgrades to onshore transmission facilities to assure that the offshore wind energy expected to be injected into New York City and Long Island can be distributed to the State at large.”³

As authorized under the OATT, the Commission also identified a preferred cost allocation approach as follows:

[T]he NYISO should apply the “beneficiaries pay principle,” and take into account the economic benefits associated with congestion relief and assign a 75% portion of the project(s) costs to the beneficiaries. However, the remaining portion of the costs should be allocated on a load-ratio share statewide given that increased access to renewables will reduce emissions and thus provide benefits statewide, consistent with the CLCPA’s objectives.⁴

¹ The capitalized terms used above are defined in the NYISO’s OATT, Attachment Y, §31.1.1. The NYISO’s Public Policy Transmission Planning Process is contained in Attachment Y of the OATT, §31.4, et seq.

² See CLCPA, Ch. 106 of the Laws of 2019 (codified, in part, in Public Service Law (PSL) §66-p). Specifically, the Commission pointed to the CLCPA mandates requiring (1) a minimum of 70 percent of electricity to be derived from renewable sources by 2030, and (2) the procurement by 2035 of at least 9,000 MW of offshore wind. March 2021 Order, p. 4 (citing PSL §66-p(2), (5)).

³ March 2021 Order, p. 20.

⁴ Id., pp. 24-25.

It is this aspect of the March 2021 Order that is the subject of separate Petitions for Rehearing: the first filed by the Long Island Power Authority (LIPA) on April 19, 2021; and the second by Consolidated Edison Company Of New York, Inc. and Orange and Rockland Utilities, Inc. (the Con Edison Companies) filed on April 20, 2021. As discussed below, the petitions each assert that (1) the Commission made errors of law and/or fact regarding the proposed cost allocation methodology justifying rehearing of the part of the March 2021 Order regarding this issue, and (2) on rehearing, the Commission should refer to the NYISO its preference for application of the statewide load-ratio share methodology instead of the methodology specified in the March 2021 Order.

Each of the petitions also requested a stay of the part of the March 2021 Order related to the preferred cost allocation in the event the Commission does not grant the petitions for rehearing prior to the sixty-day deadline by which the NYISO is required under the OATT to file the prescribed cost allocation methodology with the Federal Energy Regulatory Commission (FERC).⁵ By Order, issued on May 13, 2021, the Commission granted the requests for a stay of the March 2021 Order, while noting that "the substantive matters raised by LIPA and the [Con Edison] Companies will be addressed in a future order."⁶

⁵ OATT Section 31.5.5.4.1 states: "If the Public Policy Requirement that results in the identification by the NYPSC of a Public Policy Transmission Need prescribes the use of a particular cost allocation and recovery methodology, then the ISO shall file that methodology with the FERC within 60 days of the issuance by the NYPSC of its identification of a Public Policy Transmission Need."

⁶ Cases 20-E-0497 et al., Order Granting Motions for Limited Stay (issued May 13, 2021), p. 2.

Through this Order, the Commission now addresses the substantive issues raised in the Petitions for Rehearing. For reasons discussed below, the Commission grants the Petitions for Rehearing and, on rehearing, rules that the cost allocation formula associated with the transmission need identified in the March 2021 Order is to be based entirely on a statewide volumetric load-ratio share, consistent with the cost allocation methodology applicable to (i) projects procured under all of the tiers adopted pursuant to the Clean Energy Standard (CES), (ii) projects procured under the Offshore Wind Standard, and (iii) local transmission and distribution projects approved by the Commission as Phase 2 projects under criteria established pursuant to the "Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals," issued on September 9, 2021 (September 2021 Order).⁷

BACKGROUND

The March 2021 Order provides a detailed summary of the Commission's application of the NYISO's Public Policy Transmission Planning Process that does not bear repeating here, except to the extent relevant to the petitions before us.⁸ As explained in the March 2021 Order, the Commission's primary role in the NYISO process is to determine if any proposals solicited by the NYISO, and subjected to the public comment process under the State Administrative Procedure Act, constitute a Public Policy Requirement that warrants the NYISO soliciting transmission solutions.⁹ The Commission is also authorized to

⁷ Case 20-E-0197, Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (issued September 9, 2021).

⁸ See March 2021 Order, pp. 4-8.

⁹ Id., p. 6.

identify a preferred cost allocation formula that differs from the default formula identified in the OATT.¹⁰ The OATT specifies that the default cost allocation associated with a Public Policy Transmission Need is to be based on each of the load sharing entity's (LSE's) "load ratio share" - defined as "[t]he ratio of an LSE's Load to Load within the NYCA [i.e., New York Control Area] during a specified time period."¹¹

A. The March 2021 Order

The March 2021 Order identified a Public Policy Transmission Need related to ensuring that offshore wind energy injected onto Long Island is deliverable to the rest of the State. Absent that deliverability, the energy produced by offshore wind projects interconnected on Long Island would otherwise need to be curtailed on days of the year associated with high wind velocity and moderate load. Noting this potential problem, PSEG Long Island, LLC (PSEG-LI) - LIPA's service provider - and other parties proposed a Public Policy Transmission Need driven by the 9,000 MW offshore wind mandate established pursuant to the CLCPA.¹²

On February 3, 2021, as required under Section 31.4.2.3 of the OATT with respect to a potential Public Policy Transmission Need located in the Long Island District, LIPA filed a referral letter with the Commission identifying the CLCPA as driving two related transmission needs:

- 1) Adding at least one bulk transmission intertie cable to increase the export capability of the LIPA-Con Edison interface, that connects NYISO's Load Zone K (Long Island) to Zones I and J (Westchester County and New York City, respectively); and

¹⁰ OATT, Attachment Y, §§1.12 and 31.5.5.4.3.

¹¹ Id.

¹² See March 2021 Order, pp. 2-3.

- 2) Upgrading associated local transmission facilities to accompany the expansion of the proposed offshore wind export capability which LIPA asserts should include increasing capacity on portions of the existing 138 kV transmission "backbone" on the Long Island system between the Ruland Road and East Garden City substations to 345 kV.¹³

Although unmentioned in the March 2021 Order, LIPA also "recommend[ed] that the export cable and associated local upgrades be eligible for statewide cost allocation because the timely, cost-effective development of OSW [i.e., offshore wind] that will result from these transmission upgrades will confer statewide benefits."¹⁴

The March 2021 Order did not adopt a statewide cost allocation formula as requested by LIPA. Instead, as noted, the Commission ruled that the NYISO should apply a different formula under which (1) 75% of the selected projects' costs would be borne by the economic beneficiaries of the projects, and (2) the remaining 25% of costs would be borne by each of the LSEs under the Statewide load ratio share.¹⁵ Under this 75/25 formulation, 75% of the selected project's costs would be borne by "those [LSEs] within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits," while 25% of the project's costs would be borne by each of the State's LSEs based on the percent of overall load served by the LSE.¹⁶

The Commission sought application of the same 75/25 methodology in orders issued in the two other proceedings

¹³ Case 20-E-0497, Letter from LIPA to John Rhodes, then-Chair of the Commission (filed February 3, 2021), pp. 2-3.

¹⁴ Id., p. 3.

¹⁵ See March 2021 Order, pp. 24-25.

¹⁶ March 2021 Order, pp. 24-25 and n. 33 (citing OATT, Attachment Y, §31.5.2).

initiated under the NYISO's Public Policy Transmission Planning Process. In the AC Transmission proceedings - a series of related cases commenced in 2012 to address long-standing transmission congestion along the Central East and Upstate New York/Southeast New York electrical interfaces, the Commission adopted a cost allocation formula "whereby 75% of project costs are allocated to the economic beneficiaries of reduced congestion, while the other 25% of the costs are allocated to all customers on a load-ratio share."¹⁷ The Commission ultimately sought application of the same 75/25 formulation regarding the identified AC Transmission need in the context of the NYISO's Public Policy Transmission Planning Process, finding that "[t]his allocation reflects that the primary benefit of the project will be reduced congestion into downstate load areas, but also recognizes that some benefits accrue to upstate customers in the form of increased reliability and reduced operational costs."¹⁸

Similarly, through its "Order Addressing Public Policy Transmission Need for Western New York," the Commission found that a portion of the selected project's costs should be based on the "beneficiaries pay principle" to "take into account the

¹⁷ Cases 12-T-0502 et al., Alternating Current Transmission Upgrades, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014), p. 41. The NYISO's Public Policy Transmission Planning Process was approved by FERC on July 17, 2014, well after commencement of the AC Transmission proceedings. See N.Y. Indep. Sys. Operator, Inc., 148 FERC ¶ 61,044 (2014) (accepting second compliance filing).

¹⁸ Cases 12-T-0502 et al., supra, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015), p. 52.

economic benefits associated with congestion relief . . .”¹⁹ Nevertheless, in recognition of the fact that the selected transmission solution(s) would also provide “increased access to renewables [that] will reduce emissions and thus provide benefits statewide,” the Commission also noted its preference for “a portion of the costs [to] be allocated on a load-ratio share statewide.”²⁰

Thus, the Commission made clear in both the AC Transmission and Western New York proceedings that it apportioned 75% of the cost allocation based on the economic benefits associated with congestion relief. Although the Commission apportioned the remaining 25% of the cost allocation based on the load ratio share, as noted above, it did so for different reasons:

- *AC Transmission Proceeding:* The Commission apportioned 25% of the costs to the load ratio share based on its recognition “that some benefits accrue to upstate customers in the form of increased reliability and reduced operational costs.”
- *Western New York Proceeding:* The Commission apportioned 25% of the costs to load ratio share based on “increased access to renewables [that] will reduce emissions and thus provide benefits statewide.”

B. Petitions for Rehearing

LIPA and the Con Edison Companies filed Petitions for Rehearing on April 19 and 20, 2021. LIPA argues in its petition that rehearing should be granted on the grounds that it was inappropriate for the Commission to seek the same 75/25 cost

¹⁹ See Case 14-E-0454, New York Independent System Operator, Inc. - Proposed Public Policy Transmission Needs, Order Addressing Public Policy Transmission Need for Western New York (issued October 13, 2016), pp. 1, 16, and 17 (identifying “congestion relief in Western New York” as a Public Policy Requirement driving the need for transmission).

²⁰ Id., p. 16.

allocation assigned by the Commission to Public Policy Transmission Needs identified in the AC Transmission and Western New York Transmission proceedings. LIPA argues that, in the AC Transmission proceeding, the Commission "focused on the policy objective of reducing congestion," and relied on significant analysis to support the 75/25 allocation, "including a Staff Advisory Report that was the product of a technical conference convened to examine this issue (among others), in addition to a subsequent analysis performed by the NYISO at the Commission's direction."²¹ As for the Western New York proceeding, LIPA argues that the 75% allocated by the Commission to economic beneficiaries was for the specific purpose of addressing "congestion reduction."²² LIPA contends that the 75/25 cost allocation assigned by the Commission in the AC Transmission and Western New York proceedings is inappropriate here because congestion relief is not a basis for the identified transmission need in this case.²³

LIPA argues that, if rehearing is granted, the Commission should assign a cost allocation based on a statewide load ratio share. It asserts that the Public Policy Requirement identified in the March 2021 Order constitutes "a sea change involving the complete transition from fossil-fueled generation to renewable energy in the CLCPA, specifically the CLCPA's off-shore wind mandate."²⁴ LIPA claims that support for a cost allocation based entirely on a load ratio share can also be found in the purpose underlying the off-shore wind transmission need identified in the March 2021 Order, which it asserts is to

²¹ Id., p. 6 (citations omitted).

²² Id.

²³ Id.

²⁴ Id., pp. 6-7.

deliver offshore wind energy “from Long Island to the rest of the State and reducing the costs of offshore wind renewable energy certificates (‘ORECs’) that will be borne by all ratepayers in New York State.”²⁵

The Con Edison Companies argue in their petition that the cost allocation methodology adopted in the March 2021 Order “should be revisited as it is inappropriate as a matter of policy” on the grounds that it “did not take into account that th[e identified] public policy need is different from prior needs the Commission has identified because it is driven by the [CLCPA] mandates.”²⁶ The Con Edison Companies assert that rehearing should be granted because the March 2021 neither “explain[s] why or how assigning a large majority of the projects’ costs to beneficiaries of reduced congestion ‘is reflective of the Commission public policy objectives’” nor relies “on record evidence that its proposed 75/25 cost allocation methodology for a climate driven project is consistent with a ‘beneficiaries pay principle.’”²⁷

Should rehearing be granted, the Con Edison Companies assert that the Commission should adopt a load ratio share cost allocation “consistent with the State’s policy determination reflected in how [Renewable Energy Credits (REC)], OREC, [Zero-Emissions Credit (ZEC),] and Tier 4 REC costs are borne throughout the state.”²⁸ The Con Edison Companies also note that the “OATT establishes load ratio share as the default cost allocation in the Public Policy Transmission Planning Process” and that the NYISO based such approach on the grounds that it

²⁵ Id., p. 7.

²⁶ Con Edison Companies’ Petition for Rehearing, p. 2.

²⁷ Id., p. 5.

²⁸ Id., p. 9.

"is intended to avoid uncertainty that could present a barrier to new transmission projects needed to meet public policy needs" and is a reasonable option in the context of a single state ISO in which "public policy needs will create widespread benefits throughout the state."²⁹

NOTICE OF PROPOSED RULEMAKING

In accordance with the State Administrative Procedure Act (SAPA) §202(1) and the Commission's August 2014 Policy Statement, a Notice of Proposed Rulemaking regarding the Petitions for Rehearing was published in the State Register on June 2, 2021 [SAPA No. 20-E-0497SP2]. The time for submission of comments pursuant to the SAPA notice expired on August 2, 2021. Over 20 private and municipal entities and associations, as well as elected officials, provided responses to the petitions for rehearing, several after the 60-day deadline under SAPA. Additionally, LIPA filed comments in response to some of the public comments and Multiple Intervenors (MI) filed a reply comment to address LIPA's response. Under the Commission's regulations, replies to responses to a petition for rehearing "will not be entertained except in extraordinary circumstances."³⁰ Given the broad interest in and potentially precedential nature of this matter, the Commission finds the existence of extraordinary circumstances necessitating consideration of all initial and reply comments filed in response to the two petitions.

SUMMARY OF COMMENTS

Several business-affiliated entities filed comments opposing the petitions for rehearing, including MI, Nucor Steel

²⁹ Id., p. 10.

³⁰ 16 NYCRR §3.7(c).

Auburn, Inc. (Nucor), the New York Municipal Power Agency (NYMPA), the Buffalo Niagara Partnership, the Manufacturers Association of Central New York, Power for Economic Prosperity, Upstate United, and the Greater Binghamton Chamber of Commerce.

MI and NYMPA assert in their comments that the Commission should adhere to the 75/25 cost allocation identified with respect to the AC Transmission and Western New York transmission needs. MI asserts its view that, like the transmission needs identified in prior cases, the transmission need identified by the Commission in this case "is motivated by a desire to increase transmission capability to facilitate the deliverability of OSW generation through Long Island within the Southeast region of the State."³¹ NYMPA similarly asserts that, as in the prior cases, "[c]ongestion relief due to renewable energy policies is the primary purpose of both of the public policy projects that are the subject of this proceeding."³²

MI also asserts that enactment of the CLCPA since the Commission's identification of the AC Transmission and Western New York transmission needs does not provide justification for departing from the 75/25 formulation assigned to those needs because, in its view, the Commission's prior use of that formulation was motivated by increasing the deliverability of renewable energy.³³ NYMPA makes a similar point, noting that the primary purpose of the AC Transmission proceeding "was to upgrade and modernize New York's electric grid to deploy more renewables."³⁴

³¹ MI's Response, dated May 4, 2021, p. 8.

³² NYMPA Response, dated May 4, 2021, p. 6.

³³ MI's Response, p. 12.

³⁴ NYMPA's Response, p. 7.

Nucor argues in its comments in favor of maintaining the 75/25 cost allocation methodology on the grounds that the State's offshore wind policy, as specified in prior Commission orders, "is premised on the need to displace fossil generation on Long Island and in New York City" and that "[t]he energy, reliability, resilience, economic, fuel diversity, tax revenue, and public health benefits attributed to the offshore wind development are overwhelmingly expected to be realized on Long Island and in New York City."³⁵ In response to Con Edison Companies' argument regarding the need for certainty and consistency, Nucor counters that those policy goals would only be accomplished if the Commission maintains its prior precedent regarding the 75/25 formulation.³⁶

The Buffalo Niagara Partnership, the Manufacturers Association of Central New York, Power for Economic Prosperity Upstate United, and Greater Binghamton Chamber of Commerce all point in their comments to what they view as the regional variation in benefits associated with the Long Island-based transmission need identified in the March 2021 Order. For example, the Buffalo Niagara Partnership asserts that the benefits bestowed under the CLCPA "are not equal" in that "a ratepayer in Buffalo may receive a marginal at best benefit from Long Island's CLCPA progress"; however, "the overwhelming majority of the project's benefit is felt by those utilizing the power the project will transmit."³⁷ The Manufacturers Association of Central New York states that, "[w]hile an Upstate/Central New York ratepayer may receive a marginal benefit from Long Island's CLCPA progress, most of the project's

³⁵ Nucor's Response, dated May 4, 2021, pp. 7-10

³⁶ Id., p. 11.

³⁷ Response of Buffalo Niagara Partnership, dated June 29, 2021, p. 1.

benefit is felt by those utilizing the power the project will transmit.”³⁸

Power for Economic Prosperity asserts in its comments that “the pending petitions for rehearing could shift hundreds of millions of dollars, or more, in costs related to transmission projects for wind projects off Long Island from downstate consumers to upstate consumers through NYISO charges.”³⁹ Upstate United asserts that “[u]pstate consumers should not be forced to shoulder costs that will produce direct economic benefits downstate.”⁴⁰ Finally, the Greater Binghamton Chamber of Commerce states that “there are looming questions about the cost and affordability of the [CLCPA]” and, “[i]f the costs for these projects are not paid for by the beneficiaries, this will significantly drive-up costs for both businesses and residents in Broome County.”⁴¹

Several State legislators, including State Senators George M. Borello, Thomas F. O’Mara, Robert G. Ortt, John W. Mannion, Neil D. Breslin, Samra G. Brouk, Jeremy A. Cooney, Michelle Hinchey, Timothy M. Kenney, Rachel May, and Sean M. Ryan, and State Assembly Members Stephen Hawley and Michael J. Norris, also pointed to what they assert are the downstate benefits associated with the identified transmission need in calling on the Commission to deny the petitions.

The City of New York (City) filed a response in support of the petitions. The City states that the 75/25 cost allocation formula should not be applied here because the

³⁸ Response of Manufacturers Association of Central New York, dated July 7, 2021, p. 1.

³⁹ Response of Power for Economics, p. 2.

⁴⁰ Response of Upstate United, dated August 9, 2021, p. 1.

⁴¹ Response of Greater Binghamton Chamber of Commerce, dated August 9, 2021, p. 1.

transmission need identified in the March 2021 Order is different from the needs identified in the AC Transmission and Western New York proceedings; namely, the purpose of the transmission need here is "to facilitate achievement of the CLCPA's offshore wind goals."⁴² Citing the Commission's "Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement," the City notes that "[t]he Commission previously held that the economic and environmental benefits of offshore wind inure to all New Yorkers, and [thus] the obligations associated with the State's renewable energy goals apply to all load-serving entities and customers."⁴³ The City states that the statewide benefits of offshore wind formed the foundation of the Commission's decision to socialize "the costs of offshore wind ... across the State among all load-serving entities on a load share ratio basis," and that the same policy applies here.⁴⁴

Several Long Island-based entities offered similar support for the petitions. For example, the Association for a Better Long Island (ABLI) asserted that "it was not the intent of the CLCPA's offshore wind initiative to saddle Long Island, already burdened with high costs, with an unfunded mandate that is part of a greater statewide goal."⁴⁵ ABLI also notes that "Long Islanders have a history of supporting state energy initiatives that have benefited other regions," noting for example that "LIPA and its ratepayers could spend up to \$820m over the next decade to subsidize upstate nuclear power plants,

⁴² City's Response, dated May 13, 2021, p. 2.

⁴³ Id. (citing Case 18-E-0071, Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) (OSW Order), pp. 31-33).

⁴⁴ Id.

⁴⁵ ABLI's Response, dated June 29, 2021, p. 1.

via the Energy Research and Development Authority's Zero Emission Credits program."⁴⁶

The Nassau County Village Officials Association argues in its comments that the cost allocation specified in the March 2021 Order would "unfairly allocate costs of future transmission projects being considered to allow New York State to meet goals determined by the" CLCPA, and thus would "place a disproportionate burden on" County residents.⁴⁷ The Nassau County Executive noted that "[t]he cost allocation should reflect the fact that the entire State will benefit from a robust new alternative energy source that will improve the environment, reduce the threat of climate change and eliminate delivery bottlenecks."⁴⁸ The Suffolk County Supervisors Association similarly argues in its comments in favor of granting the petitions on the ground that "[o]ffshore wind infrastructure projects will benefit residents and businesses across New York State."⁴⁹ Other Long Island-based entities voicing similar support of the petitions include the Incorporated Village of Islandia and the Suffolk County Village Officials Association.

In its reply, dated August 2, 2021, LIPA takes issue with those comments supporting the 75/25 cost allocation methodology assigned to the transmission need identified in the March 2021 Order. LIPA starts by reiterating that the CLCPA mandated targets for offshore wind are driving the transmission needs identified in the March 2021 Order. It argues that

⁴⁶ Id.

⁴⁷ Response of Nassau Co. Village Officials Association, dated June 21, 2021, p. 1.

⁴⁸ Response of Nassau Co. Executive, dated August 10, 2021, p. 1.

⁴⁹ Response of Suffolk County Supervisors Association, dated June 25, 2021, p. 1.

because the purpose of the CLCPA is to address climate change and not congestion relief, the 75/25 cost allocation applied in the AC Transmission and Western New York proceedings is distinguishable from the allocation that should be applied here.⁵⁰ LIPA also takes issue with the argument that the 75/25 cost allocation is based on long-seated precedent, noting that such allocation has only been applied by the Commission in two cases and, in any event, the 75/25 allocation departs from the default load ratio share methodology established in Attachment Y of the NYISO's OATT.⁵¹

In its reply to LIPA's comments, MI asserts that it "appears obvious that the benefits and beneficiaries" of the transmission need identified in the March 2021 Order "overwhelmingly will be located in the Downstate region."⁵² While MI acknowledges the Commission's application of the load ratio share formula to the LSE's purchase obligation under the various CES tiers, it argues that the costs of public policy-driven transmission projects should be treated differently because such projects "are far more localized in nature than" the environmental attributes at issue under the CES tiers.⁵³

⁵⁰ LIPA's Reply Comments, dated August 2, 2021, p. 4.

⁵¹ Id., p. 6.

⁵² MI's Reply Comments, dated August 4, 2021, p. 2.

⁵³ Id., p. 3.

STANDARD OF REVIEW

The standard of review and process regarding a petition for rehearing is set forth in Section 3.7 of the Commission's regulations.⁵⁴ Any party aggrieved by a Commission order may petition for rehearing within 30 days of the order's issuance. Rehearing may be sought only on the grounds that the Commission committed an error of law or fact, or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error of law or fact or new circumstance warranting rehearing. As noted, any party may respond to a petition for rehearing within 15 days of the date the petition was served on the responding party.

DISCUSSION

Based on our review of the March 2021 Order, it appears that the Commission neither referenced nor addressed LIPA's specific request made in its referral letter to assign a statewide cost allocation formula to the requested transmission need. Instead, it appears that the Commission applied the cost allocation methodology referenced in the AC Transmission and Western New York proceedings absent analysis of why that methodology should apply to the transmission need identified in the March 2021 Order.

In analogous cases, the Commission has granted petitions for rehearing so that it may consider factual and/or legal matters that it inadvertently failed to address in the first instance. For example, the Commission granted, in part, a petition for rehearing filed by Verizon, related to issuance of a Certificate of Confirmation for a geographically limited cable television franchise, on the grounds that the initial order

⁵⁴ 16 NYCRR §3.7.

failed to "address certain underlying facts raised by Verizon"; namely, "that Verizon's one-time PEG Grant of \$21,000 was inadvertently excluded in [] calculations" underlying the order.⁵⁵ More recently, in an enforcement matter regarding utility pole attachments, the Commission granted a petition for clarification to a prior order in which an ordering clause "inadvertently directed payment of [] penalties to the Department of Public Service (DPS) Staff," rather than for such payments to "be held in escrow."⁵⁶

To comport with the reasoning in these cases, the Commission grants both LIPA's and the Con Edison Companies' Petitions for Rehearing so that it may squarely address the request to apply a statewide cost allocation formula to the transmission need identified in the March 2021 Order. On rehearing, the Commission reverses its prior ruling and holds that the NYISO's default load ratio share cost methodology is the appropriate cost allocation formula to be applied by the NYISO in addressing the transmission need identified in the March 2021 Order.

In reviewing the record, the petitions, and the public comments, the Commission is persuaded by the substantive arguments made by LIPA and the Con Edison Companies, particularly as related to the Commission's rulings requiring application of the load ratio share methodology to the LSE obligations under each of the four CES tiers and the Offshore Wind Standard.

⁵⁵ See Case 14-V-0089, Verizon New York Inc. - Certificate of Confirmation for its Franchise, Order and Certificate of Confirmation Approving Franchise Subject to Conditions (issued August 14, 2014), p. 2.

⁵⁶ Case 20-M-0360, Greenlight Networks' - Pole Attachments, Order Granting Clarification (issued October 7, 2021), p. 2.

The CES was first established through Commission's "Order Adopting a Clean Energy Standard" (CES Order), issued on August 1, 2016.⁵⁷ A key aspect of the CES Order was the Commission's determination to apply the load ratio share as the compliance obligation for each of the LSEs under both (1) Tier 1 of the Renewable Energy Standard (RES) - applicable to new renewable energy resources beginning commercial operation on or after January 1, 2015, and (2) the Tier 3 ZEC requirement - applicable to nuclear power plants located in upstate New York. With respect to the Tier 1 RES requirement, the Commission found that the compliance obligation is to be shared proportionally between each of the State's LSEs: "The obligation is to be in the form of the procurement of new renewable resources, evidenced by the procurement of qualifying RECs [i.e., Renewable Energy Credits], acquired in quantities that satisfy mandatory minimum percentage proportions of the total load served by the LSE for the applicable calendar year."⁵⁸

The Commission similarly ruled that each of the State's LSEs would be obligated to purchase Tier 3 ZECs based on "the portion of the electric energy load served by the LSE in relation to the total electric energy load served by all such LSEs."⁵⁹ The Commission based its ruling on the statewide benefits that accrue from carbon-free energy:

Applying the obligation on a volumetric basis is rational and the most appropriate basis to broadly allocate the costs given the nature of carbon emissions that are a creature of the volume of electric generation and consumption. The Commission is instituting this program *to prevent widespread*

⁵⁷ See Case 15-E-0302, Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Order).

⁵⁸ Id., p. 78.

⁵⁹ Id., p. 150.

*damage from carbon emissions that affect everyone. It is fair and appropriate for all consumers to participate.*⁶⁰

Additionally, the Commission adopted the load ratio share allocation knowing that the ZEC payments would be made to the FitzPatrick, Nine Mile Point, and Ginna nuclear power plants, all located in northern New York adjacent to Lake Ontario.⁶¹

Next is the "Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement" (OSW Order), in which the Commission ruled that the load ratio share cost allocation would also apply to the LSE's obligation to purchase ORECs: "Each LSE will be obligated to purchase the percentage of ORECs purchased by NYSERDA in a year that represents the portion of the electric energy load served by the LSE in relation to the total electric energy load served by all such LSEs in the [NYCA]."⁶² The Commission finds the OSW Order to be particularly compelling here given the nexus between the transmission need identified in the March 2021 Order and the need to ensure that offshore wind energy injected onto Long Island is capable of accessing load in the rest of the State. The OSW Order also addressed the precise argument made by several parties here; namely, that application of the load ratio share would be inequitable to ratepayers located outside of the downstate region because offshore wind would mostly benefit the downstate region. The Commission responded that:

Downstate customers have been paying and will continue to pay a proportional share of REC costs for the RES, even though the large majority of RES developments are upstate. The Commission applied the RES obligation on a statewide basis because the benefits of RES are likewise statewide. *In the case of offshore wind, the*

⁶⁰ *Id.*, p. 149 (emphasis added).

⁶¹ *Id.*, p. 146.

⁶² OSW Order, pp. 31-32.

*economic and environmental benefits will also be statewide.”*⁶³

After enactment of the CLCPA into law, the Commission expanded the CES by including a new competitive Tier 2 (applicable to certain existing renewable energy facilities) and a new Tier 4 (applicable to large scale renewables that are located within or whose energy is directly deliverable to New York City).⁶⁴ Consistent with its prior holdings, the Commission required each LSE under CES Tiers 2 and 4 to purchase RECs in proportion to its overall share of statewide load.⁶⁵ With respect to Tier 4, the Commission explained as follows:

The purpose of Tier 4 is not to confer a special benefit on a particular area of the State but to facilitate statewide compliance with the CLCPA. Thus, contrary to the suggestion of some commenters, there is no basis for allocating a disproportionate cost of Tier 4 to Zone J customers. Like every tier within the CES, each of which has its own geographic characteristics, the financial responsibility for Tier 4 is most fairly allocated on a statewide load-share basis.⁶⁶

The Commission recently reaffirmed the application of the load ratio share methodology to two Tier 4 projects subject to the Commission’s contract approval.⁶⁷ The Commission also recently found that the costs of “Phase 2” projects (i.e., local and transmission and distribution projects “necessary or

⁶³ Id., p. 34 (emphasis added).

⁶⁴ Case 15-E-0302, supra, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (CES Modification Order).

⁶⁵ Id., pp. 67-68 and 102.

⁶⁶ Id., p. 103.

⁶⁷ See Case 15-E-0302, supra, Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates (issued April 14, 2022), pp. 136-39.

appropriate to accelerate progress toward achievement of the CLCPA mandates") would similarly "be allocated across Utilities based upon a volumetric MWh load ratio share methodology."⁶⁸

Another relevant transmission project is the Smart Path Connect project - which was approved as a "priority transmission project" by the Commission at the October 2020 session.⁶⁹ The New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid each recently filed applications with FERC to allocate and recover the costs of each entity's investment in their aspects of the project through a load ratio share allocation.⁷⁰

The determination here is also supported by the CLCPA because that statute provided the basis for the Public Policy Requirement found to apply in the March 2021 Order. The CLCPA cites repeatedly in the Legislature's "findings and declaration" to the statewide benefits that are to accrue from implementation of the clean energy and technology mandates specified under the statute.⁷¹ For example, the Legislature declared that "[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York," and detailed the multiple ways climate change is adversely impacting the State, including through an increase in the "severity and frequency of extreme weather events," "a decline in freshwater

⁶⁸ September 2021 Order, p. 32.

⁶⁹ See Case 20-E-0197, supra, Order on Priority Transmission Projects (issued October 15, 2020) (referred to as the Northern New York project).

⁷⁰ See FERC Case ER-1204, Letter, dated February 10, 2022, from Gary D. Levenson Principal Attorney, New York Power Authority, to Kimberly D. Bose, Secretary of FERC, p. 4; FERC Case ER22-1201, Letter, dated March 4, 2022, from David Lodemore, Senior Counsel, National Grid USA to Honorable Kimberly D. Bose, Secretary of FERC, p. 3.

⁷¹ L. 2019, ch. 106, §1(1).

and saltwater fish populations," "increased average temperatures, which increase the demand for air conditioning and refrigeration among residents and businesses," and "exacerbation of air pollution."⁷² The Legislature declared that the primary purpose of CLCPA is for "New York" to address these impacts head on by "reduc[ing] greenhouse emissions," which the Legislature found would result in an associated reduction in "the rate of climate change."⁷³

The CLCPA established numerous statewide targets to address the specified statewide impacts, including the "goal of the state of New York to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030."⁷⁴ The CLCPA also included several "statewide" renewables mandates,⁷⁵ which the Commission is implementing through the CES Modification Order. Nothing in the statute calls for a regional variation in approach to addressing climate change.

The Commission further finds relevant the Accelerated Renewable Energy Growth and Community Benefit Act (Accelerated Renewables Act) because it required, among other things, for the Department of Public Service (DPS) to prepare a Power Grid Study and the study then prepared by DPS recommended the specific

⁷² Id.

⁷³ Id., §3.

⁷⁴ Id., §1(4).

⁷⁵ See CLCPA §4 (adding a new PSL §66-p) (requiring the Commission to establish programs to ensure that at least 70% of "statewide" electric generation is from renewable resources by 2030; by the year 2040 the "statewide electrical demand system will be zero emissions"; and "the procurement by the state's load serving entities of at least nine gigawatts of offshore wind electricity generation").

transmission need identified in the March 2021 Order.⁷⁶ Of note here is the legislative finding under the Accelerated Renewables Act that the statewide emissions- and technology-based targets established in the CLCPA could not be attained absent significant upgrades to the State's transmission system:

In particular, the state shall provide for timely and cost effective construction of new, expanded and upgraded distribution and transmission infrastructure as may be needed to access and deliver renewable energy resources, which may include alternating current transmission facilities, high voltage direct current transmission infrastructure facilities, and submarine transmission facilities needed to interconnect off-shore renewable generation resources to the state's transmission system.⁷⁷

In sum, the LSE compliance obligation specified in the Commission's rulings regarding each of the CES Tiers and the Offshore Wind Standard is based on the load ratio share. We find that the reasoning underlying those rulings applies with equal force here. The Commission also finds the load ratio share cost allocation methodology to be consistent with the statewide focus of the CLCPA and the Accelerated Renewables Act, and notes that NYPA and National Grid are seeking application of the same methodology with respect to the Smart Path Connect project.

Finally, as already intimated, the Commission finds compelling the direct nexus between the transmission need identified in the March 2021 Order and the offshore wind procurement mandate imposed under the CLCPA. This nexus is made clear from the March 2021 Order, where the Commission found that "additional transmission from Long Island (NYISO Zone K) to the mainland (Zones I and J) will be needed by 2035 to enable the

⁷⁶ See Id., §7; March 2021 Order, pp. 21-22.

⁷⁷ See L. 2020, ch. 58, part JJJ, §1(2)(b).

interconnection of at least 3,000 MW (of the 9,000 MW total) of OSW to LIPA's system."⁷⁸ To put this into context, the transmission upgrades necessary to adequately deliver energy from offshore wind interconnected on Long Island to the rest of the State is a direct outgrowth of the 9,000 MW offshore wind procurement mandate imposed on the Commission by the CLCPA. Since the Commission already determined that ORECs are to be paid through an obligation placed on LSEs based on a load ratio share methodology, it makes logical sense to require a directly related transmission need to be paid for through the same methodology.

As noted above, several parties, including MI and NYMPA, request that the Commission adhere to the 75/25 formulation applied with respect to the AC Transmission and Western New York transmission needs. However, the Commission finds that the reasoning underlying the 75% apportioned under the 75/25 allocation is inapposite here. That principle was first espoused in the Commission's "Order Establishing Modified Procedures for Comparative Evaluation," which, as noted above, was issued on December 16, 2014, well before the Commission's adoption of the CES and enactment of the CLCPA and Accelerated Renewables Act.

The Commission also finds support from the reasoning behind its assignment of a 75/25 cost allocation methodology to the transmission needs identified in the AC Transmission and Western New York proceedings. As noted above (at pp. 7-8), the primary basis for the Commission's identification of transmission needs in both proceedings, and the reason for the 75% allocated to beneficiaries, was the economic benefits associated with congestion relief that would be addressed by the

⁷⁸ March 2021 Order, pp. 22-23 (citing Offshore Wind Study).

needs. That simply was not a benefit referenced by the Commission in the March 2021 Order. Instead, the Commission finds here that all utility customers are equal beneficiaries of the projects to be selected pursuant to the transmission need identified in the March 2021 Order because of the intended role of the projects to distribute zero-emission energy to the rest of the State.

Moreover, in the Western New York proceeding, the Commission pointed to increased access to renewables as an ancillary benefit of the identified transmission reason, and hence the reason why it assigned only 25% of the costs to load ratio share.⁷⁹ Here, by contrast, the entire focus of the identified transmission need is on facilitating compliance with the CLCPA by ensuring that offshore wind energy is accessible to the rest of the State whenever it is being produced. Thus, rather than allocating only 25% of the costs to load ratio share, as the Commission did in the Western New York proceeding, the load ratio share is being assigned to 100% of the costs here because access to renewables constituted the entire basis for identifying the transmission need in the March 2021 Order.

The Commission disagrees with MI's assertion that the AC Transmission and Western New York transmission needs rested primarily on increasing the deliverability of renewable energy. As just noted, the primary basis underlying the identified transmission needs was the economic benefits associated with reducing transmission congestion; increased access to renewable energy was identified as a benefit only in the Western New York proceeding, albeit as an ancillary benefit.

⁷⁹ See supra, pp. 7-8. By contrast, none of the cost allocation in the AC Transmission proceeding was based on increased access to renewables.

The Commission also disagrees with the arguments made by Nucor, the Buffalo Niagara Partnership, the Manufacturers Association of Central New York, and other commenters to retain the 75/25 formulation on the grounds that the transmission need identified in the March 2021 Order would only benefit downstate New York and thus any projects selected to meet that need should be paid predominantly by ratepayers in that region. As noted, the Commission believes that all aspects of offshore wind energy, including the transmission upgrades necessary to enable that energy to access the rest of the State, have statewide benefits. There is, moreover, no basis to differentiate the policies underlying the application of the load ratio share methodology to the LSEs' compliance obligation under both the CES and Offshore Wind Standard from the policies underlying the Commission's decision here. In short, the policies underlying the forgoing Commission orders, as well as the CLCPA and Accelerated Renewables Act, support a unified statewide approach to transforming the State's energy production and delivery system.

CONCLUSION

For the foregoing reasons, the Petitions for Rehearing filed by LIPA and the Con Edison Companies are granted and, on rehearing, the Commission reverses the aspect of the March 2021 Order related to cost allocation and holds here that the load ratio share cost allocation methodology should be applied by the NYISO in addressing the transmission need identified in the March 2021 Order.

The Commission orders:

1. The Petitions for Rehearing filed by the Long Island Power Authority and Consolidated Edison Company of New York, Inc. are granted, and, on rehearing, the substance of the relief requested in the petitions is also granted.

2. The New York Independent System Operator, Inc. shall utilize the default load ratio share allocation formula identified in the Open Access Transmission Tariff related to the cost recovery associated with the Public Policy Transmission Need identified in the March 2021 Order previously issued in this case.

3. These proceedings are closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary