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March 26, 2020

Via eTariff Filing

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

**Re: LS Power Grid New York Corporation I
New York Independent System Operator, Inc.
Docket No. ER20-716-000
Response to Deficiency Letter**

Dear Secretary Bose:

On December 31, 2019, LS Power Grid New York Corporation I ("LSPG-NY"), through the New York Independent System Operator, Inc. ("NYISO"), filed a transmission formula rate template and formula rate implementation protocols("Formula Rate")[1] under Section 205 and 219 of the Federal Power Act (FPA).[2] On February 27, 2020 the Commission issue a letter indicating certain deficient information regarding certain aspects of the Formula Rate.[3] As discussed more fully in the responses below, addressing the Commission's inquiries does not require edits to LSPG-NY's Formula Rate. As a result, with this submission, LSPG-NY, through NYISO,[4] resubmits the Formula Rate and requests an effective date of May 27, 2020, which is more than 60 days from the date of this submission.

1 *See*, Transmittal Letter of LSPG-NY as filed through eTariff by NYISO on December 31, 2019 ("Transmittal Letter").

2 16 U.S.C. §§ 824d, 824s (2012).

3 Letter from Office of Energy Market Regulation to LS Power Grid New York Corporation I and New York Independent System Operator, Inc., dated February 27, 2020.

4 The NYISO submits this filing on LSPG-NY's behalf solely in its role as the tariff administrator for the NYISO Open Access Transmission Tariff ("OATT"). The burden of demonstrating that

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LSPG-NY provides the following response to the Commission's questions:

1) Acquisition Premiums

Commission Inquiry:

> LSPG-NY states that Segment A involves replacement of two existing 230 kV transmission circuits with new 345 kV circuits using existing rights of way where available. LSPG-NY states that it is currently negotiating agreement(s) with the existing asset owners and the structure of the ultimate agreement(s) are not yet known (Proposed Transaction(s)). LSPG-NY states that these Proposed Transactions may involve acquisition premiums because the policy of the State of New York is for a transfer of utility real estate at fair market value, which will likely be an amount above the amount permitted by the Commission's regulations and rules.
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> LSPG-NY states that consistent with the Commission policy on acquisition premiums, if Segment A results in the acquisition of these existing facilities at more than book cost, any amount above cost will be considered an acquisition premium which is not allowed in rates unless LSPG-NY shows: (1) the transaction was an arms-length transaction; (2) the acquired facility is being put to new use; and (3) whether the purchaser has demonstrated consumer benefits resulting directly from the sale.
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> LSPG-NY's Formula Rate indicates that "[n]o Acquisition Adjustment will be recovered until a filing requesting recovery is submitted to and approved by FERC under FPA Section 205." However, LSPG-NY states that it meets the Commission's requirements for inclusion of acquisition premiums in this application.
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> Please clarify whether LPSG-NY plans to make a Section 205 filing to request and support the recovery of any acquisition premium before including it in rates.

LSPG-NY Response:

The confusion regarding the Acquisition Premium appears to arise from the dual nature of the proposed Formula Rate Template. The Formula Rate Template and Protocols are intended to apply to LSPG-NY's investment in the transmission facilities currently assigned to LSPG-NY by NYISO as reflected in NYISO's filing of March 04, 2020 in ER20-1156-000 of the Public Policy Transmission Planning Process Developer Agreement (Service Agreement No. 2514) among the NYISO, LS Power Grid New York Corporation I and the New York Power Authority. The

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the proposed revisions to the NYISO OATT are just and reasonable rests with LSPG-NY, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time.

Formula Rate Template would also be applicable to any future Transmission Facilities assigned to LSPG-NY by NYISO under its Tariff, or acquired by LSPG-NY. As such, the Formula Rate Template was structured to account for the transmission facilities referenced extensively in the Section 205 filing made on December 31, 2019, as well and any future facilities.

Regarding the transmission facilities being constructed under the Developer Agreement, LSPG-NY outlined fully in the Transmittal Letter, those limited circumstances under which it would acquire facilities that could be considered acquired at a 'premium' as defined by the Commission. The Transmittal Letter further fully supported inclusion of any such premium in rates as any transaction would be at arms-length, would result in a new use of the acquired facilities and the consumer benefits arising from the new transmission facilities.[5] Thus, it was the intent that to the extent that facilities are acquired as outlined in the Transmittal Letter in a manner that results in a premium over their book value, that those sums be included in rates under the Template, subject of course to the challenge procedures under the protocols.

Because the Formula Rate Template includes an Acquisition Adjustment cell that could be used related to further acquisitions, Appendix A, Note B makes it clear that no premium would be recovered for such future transactions absent a request under Section 205 and approval by the Commission. Since LSPG-NY has fully supported in the current Section 205 application any acquisition premium for which recovery would be sought related to the Project,[6] the note appropriately reflects both Commission action on the transmittal letter and the implications if a further acquisition or assignment were to result in a premium.

2) Regulatory Assets

Commission Inquiry:

> Please identify the Uniform System of Accounts (USofA) accounts that LSPG-NY will use to amortize amounts recorded in the Regulatory Asset accounts in LSPG-NY's Formula Rate.

LSPG-NY Response:

LSPG-NY proposes to accrue carrying charges on the regulatory assets from the

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5 Transmittal Letter at 20.

6 *Id*. at 19-20.

effective date of the asset until such time as the cost is included in rate base, at which time LSPG-NY proposes to amortize the asset over ten years by debiting Account 566, Miscellaneous Transmission Expenses, and crediting Account 182.3, Other Regulatory Assets.[7]

3) Performance-based Rate and 80/20 Cost Containment Provision

Commission Inquiry:

> LSPG-NY's filing describes an additional return-on-equity (ROE) adder to account for sharing of the savings as ranging from 0.05 percent for costs less than 5 percent below an adjusted cost cap to 0.71 percent for costs greater than 25 percent below an adjusted cost cap.
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> a) To the extent that the proposed 80/20 cost containment provision differs from that proposed to NYISO when NYISO selected LSPG-NY's proposal for Segment A, please provide support for the differences in the proposed 80/20 cost containment provision.
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> b) Please provide an explanation for how the ROE adder levels were derived.
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> c) Please provide Formula Rate mathematical calculation(s) illustrating how the ROE adders would be included in the Formula Rate. Specifically, provide the mathematical formula details for Appendix A and Attachment 4, Competitive Bid Concession, on lines 66-67 for the Adjusted Cost Cap and Performance-based Rate Incentive, and Attachment 5 - Example of True-Up Calculation, Col. C - Adjusted Net Revenue Requirement, for how the tiered ROE adders would be implemented in the Formula Rate.
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> d) Please explain why LSPG-NY includes Allowance For Funds Used During Construction as an exception to its cost containment provision.
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> e) Please explain the nature of and the rationale for the Adjusted Cost Cap.
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> f) The Commission has previously approved "an applicant's proposal to limit an incentive ROE based on the project's risks and challenges to the cost estimate utilized at the time of RTO approval." Please explain the aspects of LSPG-NY's proposal that are different from the Commission-approved approach and provide support for these differences.

LSPG-NY Response:

a) For the simple response, LSPG-NY does not believe that its "proposed 80/20 cost containment provision [ ] differ[s] from that proposed to NYISO when NYISO selected LSPG-NY's proposal for Segment A" in any material or substantial way. However, because of the

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[7] *See, e.g.*, *DCR Transmission, LLC*, 153 FERC ¶ 61,295 at P 37; *Transource Missouri*, LLC, 141 FERC ¶ 61,075, at P 58 (2012) (*Transource Missouri*); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 154 (2008).

history of the 80/20 cost containment construct, LSPG-NY provides a more detailed answer than the simple response to provide the full background of the construct. In this regard, the inclusion of both "proposed . . . to NYISO" and "when selected" in the phrase fails to account for the evolution of the 80/20 cost containment construct, for all respondents, over the course of NYISO's competitive process. LSPG-NY recounts below that evolution, as well as any differences in the cost containment provisions resulting from that evolution, to demonstrate that the 80/20 cost containment provision included with the Formula Rate is just and reasonable.

History of 80/20 cost containment construct:

In a December 11, 2014 Order, the New York Public Service Commission adopted an 80/20 cost containment construct for the AC Transmission Proceeding:

> Accordingly, if actual costs come in above a bid, the developer should bear 20% of the cost over-runs, while ratepayers should bear 80% of those costs. If actual costs come in below a bid, then the developer should retain 20% of the savings. Furthermore, if the developer seeks incentives from FERC above the base return-on-equity otherwise approved by FERC, then the developer should not receive any incentives above the base return-on-equity on any cost overruns over the bid price… [8]
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> …The [New York Public Service] Commission also acknowledges that a developer may incur additional, identifiable, and verifiable costs necessary to comply with Commission-imposed modifications and mandates that could not have been reasonably anticipated in formulating the initial bid price. These additional qualifying costs would need to exceed a materiality threshold of 5% above the initial bid price to be recoverable. To encourage further creativity, developers will be allowed to propose alternative risk-sharing proposals if they are submitted in addition to the developer's bid prepared on the above-described partial pass-through model. Developers are also free to propose methods to index their bid prices to changes in the cost of key elements so long as the indexes chosen are governmental in origin and not subject to influence or manipulation by developers. [9]

The December 17, 2015 New York Public Service Commission Order finding a Public Policy Transmission Need (Exhibit LSPG-NY-103) carried this forward as a requirement for the NYISO competitive process:

> The [New York Public Service] Commission already ruled in these proceedings on what incentive would be appropriate to ensure accurate cost estimates. If actual costs come in above a bid, the developer should bear 20% of the cost over-runs, while ratepayers should bear 80% of those costs. If actual costs come in below a bid, then the developer should retain 20% of the savings. Furthermore, if the developer seeks incentives from FERC above the base return-on-equity otherwise approved by FERC, then the developer should

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8 Case 12-T-0502, et al., Alternating Current Transmission Upgrades, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014), p. 44.

9 *Id*. at p. 45.

> not receive any incentives above the base return-on-equity on any cost overruns over the bid price. The bid price would therefore cap the costs that may be proposed to FERC for incentives.[10]

In addition, the December 17, 2015 Order required:

> The percentage rates applied to account for contingencies and revenue requirement should all be treated uniformly across all estimates so that those factors are not manipulated by the bidders to confuse or artificially skew the results. The selection process shall not use the percentage rates applied to account for contingencies and revenue requirement as a distinguishing factor between bids. For the purposes of bids, all developers should account for contingencies and revenue requirement at the percentage rates provided in the Trial Staff report as a placeholder for the actual rates.[11]

The February 29, 2016 NYISO Solicitation (Exhibit LSPG-NY-104) included a requirement to reflect 80/20 incentive regime:

> The second required cost estimate shall reflect an 80/20 incentive regime to control costs. The NYPSC Order stated its intent that if actual costs come in above a cost estimate, the Developer bears 20% of the cost over-runs, while ratepayers bear 80% of those costs. The NYPSC Order stated its intent that if actual costs come in below a cost estimate, then the Developer should retain 20% of the savings. Furthermore, if the Developer seeks incentives from FERC above the base return-on-equity otherwise approved by FERC, then the Developer shall not receive any incentives above the base return-on-equity on any cost overruns over the cost estimate. The NYPSC Order stated that the cost estimate would therefore cap the costs that may be proposed to FERC for incentives.

LSPG-NY submitted the joint proposal on April 30, 2016, accepting the 80/20 cost containment as defined by the PSC Order.

Subsequent to April 30, 2016, there were several additional developments related to implementation of the 80/20 cost containment pursuant to the PSC order. On March 27, 2017 NYISO, on behalf of the New York Public Service Commission, filed proposed tariff provisions in Docket ER17-1310 including a proposal to implement the 80/20 cost containment through to an adjustment to the rate of return on equity. Although other elements of the filing were approved by FERC on November 16, 2017, the Commission did not approve the cost containment mechanism noting:

> In addition, NYISO describes, without accompanying tariff revisions, the New York Commission's preferred cost containment mechanism for the AC Transmission Upgrades. Under the New York Commission's cost containment proposal, if the actual capital costs differ from the cost estimate, ratepayers would be responsible for 80 percent

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[10] Exhibit No. LSPG-NY-103 at p. 48.

[11] Id. at 47, and Appendix B, Paragraph 14.

> of any cost overruns and retain 80 percent of any cost savings. The transmission developer would be required to absorb 20 percent of any cost overruns and forego any related incentives on the cost overruns, and would retain 20 percent of any cost savings. In regard to implementing the 80/20 Risk Sharing Mechanism, because the New York Commission recognizes that the Commission's policy on cost recovery allows transmission developers to recover costs that are prudently incurred, it proposes to limit the selected transmission developer's ability to recover costs associated with cost overruns by reducing the allowed return on equity for the transmission project…;[12]
>
> …Finally, we make no finding regarding the New York Commission's 80/20 Risk Sharing Mechanism. The filing does not include tariff sheets for the mechanism, and as such, is not properly before us. In its Deficiency Letter Response, NYISO states that it plans to file tariff sheets for the 80/20 Risk Sharing Mechanism after concluding its stakeholder process. Any such future FPA section 205 filing will be noticed for comment and addressed by the Commission, as appropriate.[13]

On November 16, 2017, FERC issued an order approving the settlement of rates of New York Transco, LLC in Docket ER15-572.[14] New York Transco, LLC filed formula rates on December 4, 2014, prior to the NYPSC orders defining the 80/20 cost containment. In the settlement of the formula rate filing as approved by FERC, New York Transco agreed to implement 80/20 cost containment through an adjustment to the rate of return on equity. In the event the cost is above an estimate, New York Transco, LLC would have no rate of return on equity for 20% of such overrun. In the event the cost is below an adjusted estimate, New York Transco, LLC would receive an adder to its rate of return on equity.

On August 17, 2018, FERC issued an order approving the settlement of rates of NextEra Energy Transmission New York, Inc. ("NEETNY") in Docket ER16-2719. NEETNY filed formula rates on September 30, 2016. In settlement of the formula rate filing as approved by FERC, NEETNY agreed to implement the 80/20 cost containment through an adjustment to the ROE. In the event the cost is above an estimate, NEETNY would have no rate of return on equity for 20% of such overrun. In the event the cost is below an adjusted estimate, NEETNY would receive an adder to its rate of return on equity.

LSPG-NY's Implementation of 80/20:

NYISO selected LSPG-NY's proposal for Segment A on April 8, 2019. LSPG-NY's proposal to implement the 80/20 cost containment provision are modeled on the approved Settlements in Dockets ER15-572 and ER16-2719, which are the 80/20 cost containment provisions in place when NYISO selected LSPG-NY's proposal for Segment A. As described above, the 80/20 cost containment provision had evolved over the course of the NYISO process and LSPG-NY's filing reflects that evolution. The table below identifies differences between the 80/20 cost

[12] New York Independent System Operator, 161 FERC ¶ 61,160 (2017) at P 6.

[13] *Id*. at P 30.

[14] New York Independent System Operator, Inc., 161 FERC ¶ 61,161 (2017).

containment provision as described in the NYISO proposal window, and the 80/20 cost containment provision included in LSPG-NY's filing:

	80/20 Cost Containment Described During Proposal Window	80/20 Cost Containment as Proposed in Formula Rate Template
Estimate for Purposes of Cost Overrun	Raw construction costs plus allowance of 30% contingency (as assumed in the Trial Staff report), with the ability to index bids, and not including CWIP or AFUDC	Raw construction costs plus allowance of 30% contingency (as assumed in the Trial Staff report), indexed based on Handy-Whitman Index for Electric Utility Construction-Total Transmission Plant, North Atlantic,[15] and not including AFUDC
Adjustment to Cost Estimate Due to Material Modifications	Cost estimate to be adjusted for NYPSC-imposed modifications and mandates that could not have been reasonably anticipated in formulating the initial bid price, provided additional qualifying costs exceed a materiality threshold of 5%	Cost estimate to be adjusted for NYPSC-imposed modifications and mandates that could not have been reasonably anticipated in formulating the initial bid price, provided additional qualifying costs exceed a materiality threshold of 5%. Other unforeseeable costs including change-in-law or force majeure also subject to 5% materiality threshold
Third Party Costs	Silent on impact of impact of payments to incumbent transmission owners	Estimate for Purposes of Cost Containment excludes Third Party Costs, defined as NYISO required scope changes and payments or costs related to incumbent Transmission Owners including for real estate
Adjustment for Purposes of Cost Overrun	Developer bear 20% of cost overruns	Developer bear 20% of cost overruns through adjustment of return on equity on cost overruns to zero.
Incentives for Cost Overrun	Forgo any incentives on cost overruns	Forgo any incentives on cost overruns
Estimate for Purposes of Cost Savings	Raw construction costs plus allowance of 30% contingency (as assumed in the Trial Staff report), with the ability to index bids, and not including CWIP or AFUDC	Raw construction costs plus allowance of 5% contingency, with the ability to index bids, and not including AFUDC
Adjustment for Purposes of Cost Savings	Developer to retain 20% of any cost savings below cost estimate	Developer to receive share of cost savings below cost estimate based on sliding scale adder to rate of return on equity

As discussed above, LSPG-NY does not believe that any of the referenced differences between the 80/20 cost containment construct at the time of the NYISO solicitation and NYISO selection of LSPG-NY are material and the proposed implementation of the 80/20 cost containment

15 The NYISO Estimate was in 2017 dollars so the Handy Whitman index was used to bring those dollars current for purposes of the Transmittal Letter.

construct is consistent with Commission-approved settlements relating to implementation of the same construct.

b) The ROE adder levels for implementation of cost savings below the Adjusted Cost Cap were established in the Settlements in Dockets ER15-572 and ER16-2719.

c) The Formula Rate mathematical calculation(s) illustrating how the ROE adders would be included in the Formula Rate are straight-forward. If costs are below the adjusted cap then the incentive ROE (Attachment 4, Line 66, Column (e)) would be adjusted to the new value. For example if costs are 8% below the Adjusted Cost Cap then the incentive return would be: 0.5% (RTO adder) + 0.17% = 0.67%. This calculation will be made for both the projection and the true-up. Attached hereto as Attachment A is a hypothetical Template with Attachment 4 of the Template reflecting the calculation.

The true-up calculation in Attachment 5 calculates the amount of under- or over-collection of LSPG-NY's actual Net Revenue Requirement. LSPG-NY's projected Net Revenue Requirement for the Rate Year (Line 2(d)) is compared to LSPG-NY's actual Net Revenue Requirement for the (Line 2(c)), resulting in the net under- or over-collection, referred to as the true-up amount (Line 2(e)). The true up amount is essentially a comparison of the Attachment 4 revenue requirements using actuals vs. the projection. Interest is calculated on the true-up amount (Line 2(f)) using the applicable FERC reported interest rates, resulting in the total true-up adjustment (line2(g)). See the hypothetical Template attached hereto as Attachment A with Attachment 5 of the Template reflecting the calculation.

d) The NY PSC order established that cost estimates be based on raw costs, without an Allowance For Funds Used During Construction, CWIP, or contingency, and that the selection process shall not use the percentage rates applied to account for contingencies as a distinguishing factor between bids. Therefore, an Allowance For Funds Used During Construction is an exception to the cost containment provision because it was an exclusion identified in LSPG-NY's proposal and the independent cost estimate used for the basis of the cost containment does not include an Allowance For Funds Used During Construction.

e) The concept of the Adjusted Cost Cap was taken from the settlements in Dockets ER15-572 and ER16-2719. LSPG-NY was not a party to those dockets, but understands the nature of the Adjusted Cost Cap is to create a deadband for the purpose of the cost containment, such that the estimate for the purpose of the 20% sharing of cost savings below the estimate does not include the full amount of contingency, but includes an allowance of only 5% contingency.

f) There are no substantive differences. LSPG-NY is proposing to limit the incentive ROE to the cost estimate utilized at the time of RTO approval, with adjustments known at the time of such approval. For example, the NYISO estimate was in 2017 dollars so it is proposed to be indexed using an independent third-party industry index to year of occurrence dollars for purposes of the applicable estimate. Likewise, the estimate for purposes of LSPG-NY's incentive ROE does not include AFUDC or transmission owners costs.

The foregoing information fully responds to the Commission's deficiency letter and requires no changes in the Formula Rate Template nor the Formula Rate Protocols. In addition to this letter, LSPG-NY's submission includes:

(i) Attachment A, a hypothetical Template demonstrating the operation of the proposed the 80/20 cost containment construct; and
(ii) Attachment B, the proposed revisions to the NYISO OATT that were initially contained in Attachment A of LSPG-NY's December 31, 2019 filing in this proceeding.

LSPG-NY requests that the Commission approve the Formula Rate with an effective date of May 27, 2020, which is more than 60 days from this submission. Please do not hesitate to contact the undersigned with any additional questions.

Respectfully submitted,

Michael R. Engleman

Michael R. Engleman

CC: Mr. Kurt Longo via e-mail