

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Improvements to Generator Interconnection</b>	)	
<b>Procedures and Agreements</b>	)	<b>Docket No. RM22-14-000</b>
	)	

**REPLY COMMENTS OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with the Notice of Proposed Rulemaking (“NOPR”)<sup>1</sup> and the October 28 *Notice on Request for Extension of Time* in the above-captioned proceeding, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits these reply comments. The NYISO’s reply emphasizes that there is broad support, especially among New York State entities, for the key positions that the NYISO has taken in this proceeding. Most notably, there is widespread recognition that interconnection processes should improve to better accommodate the clean energy transition coupled with an understanding that the NYISO is already moving in the right direction. Improvements should be made, but there is room for regional flexibility and reasonable reforms. These reply comments also underscore that there is overwhelming opposition to the NOPR’s proposed penalties for untimely interconnection studies (the “Penalty Proposal”). Despite what a few parties have suggested, there is no legal or policy justification for making the Penalty Proposal even more harsh and inequitable. Finally, the NYISO reiterates its request from its initial comments<sup>2</sup> that the Commission consider more reasonable and legally defensible alternatives to the Penalty Proposal to address the timeliness of interconnection studies.

---

<sup>1</sup> *Improvements to Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,194 (2022) (“NOPR”).

<sup>2</sup> *Comments of the New York Independent System Operator, Inc.*, Docket No. RM22-14-000 (Oct. 13, 2022) (“NYISO Comments”).

## **I. The Record Strongly Supports the Need for Balanced Reforms that Allow for Region-Specific Solutions**

The clean energy transition is proceeding rapidly in New York State because of the Climate Leadership and Community Protection Act of 2019 (“CLCPA”)<sup>3</sup> and other factors. To be clear, the NYISO agrees that its interconnection process can be improved to better accommodate the continuing influx of new clean energy projects. The NYISO does not claim that any existing interconnection framework is perfect, including its own. The NYISO expressly “agrees with the stated goals of the NOPR to ensure that developers can interconnect to the transmission system in a reliable, efficient, transparent, and timely manner in light of the changing landscape in the type and volume of generation projects.”<sup>4</sup>

The NYISO implemented many of the NOPR’s major reforms years ago, *e.g.*, the NYISO already uses a first-ready, first served approach and uses a cluster study as its final study.<sup>5</sup> Existing interconnection rules and processes are already being improved to address the issues of greatest concern to all stakeholders. The NYISO Comments explained in detail that, “[i]n recent years, the NYISO has adopted comprehensive revisions to its interconnection processes driven by both stakeholder and developer input . . . .”<sup>6</sup> Furthermore, the NYISO is pursuing multiple new initiatives to improve the interconnection process<sup>7</sup> beyond what the NOPR would require.

---

<sup>3</sup> Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney). The CLCPA requires New York State to reach 70% renewable energy by 2030 and zero-emissions in the power sector by 2040.

<sup>4</sup> NYISO Comments at 4.

<sup>5</sup> *See, e.g., Id.* at 5.

<sup>6</sup> *Id.* at 3, Appendix A.

<sup>7</sup> *Id.* at 4, Appendix B.

The very New York State agencies that are responsible for implementing the CLCPA and achieving New York’s clean energy policy goals have endorsed the NYISO’s efforts.

Specifically, the New York State Public Service Commission and New York State Energy Research and Development Authority filed joint NOPR comments (“NY State Agencies”).<sup>8</sup> The NY State Agencies state that “timely interconnection of new renewable resources is critical if New York is to meet the Climate Act requirements”<sup>9</sup> but also urge the Commission to expedite the process “in a rational manner.”<sup>10</sup> The NY State Agencies support various proposed NOPR reforms but also look with favor on the NYISO’s interconnection process, which they recognize is fundamentally consistent with the NOPR.”<sup>11</sup> They also urge the Commission to take a balanced, flexible approach that accommodates regional differences.<sup>12</sup>

With respect to the Penalty Proposal, the NY State Agencies, like the NYISO,<sup>13</sup> call for reasonable “regionally-tailored” study timelines that reflect the actual volume and complexity of studies in a region.<sup>14</sup> They express concern about the impact of financial penalties on not-for-profit Independent System Operators and Regional Transmission Organizations (“ISOs/RTOs”). They ask the Commission to better balance “how the imposition of fines may discourage and/or

---

<sup>8</sup> *Initial Comments of the New York State Public Service Commission and New York State Energy Research and Development Authority*, Docket No. RM22-14-000 (Oct. 13, 2022) (“NY State Agencies”) at 2 (“The NY State Agencies play a key role in developing and implementing the State’s nation-leading clean energy and climate change policies.”)

<sup>9</sup> N.Y. State Agencies at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.*

<sup>13</sup> See NYISO Comments at 30 (“If the Commission moves away from the reasonable efforts standard, it will be critically important to ensure that study deadlines are reasonable in light of actual complexity and difficulty presented by particular studies.”)

<sup>14</sup> See NY State Agencies at 5.

unduly discriminate against ISOs and their customers against the need for predictable and certain interconnection processes, and market impacts including costs associated with interconnection delays.”<sup>15</sup> The NY State Agencies say nothing to suggest that the NYISO’s interconnection processes, including improvements that the NYISO is already developing and that would be pursued if other NOPR reforms are adopted, is “severely deficient” or a “threat” to CLCPA implementation.

Similarly, the New York State Utility Intervention Unit (“UIU”), which represents the interests of New York consumers in federal energy regulatory proceedings,<sup>16</sup> filed comments urging the Commission to support the NYISO’s ongoing reform efforts, not to radically upend them.<sup>17</sup> The UIU asked the Commission to allow for regional flexibility because many of the NOPR’s proposals “were either not relevant, as existing interconnection processes already meet the stated objectives, or they may undermine productive NYISO and stakeholder discussions regarding interconnection process reforms in progress.”<sup>18</sup> It urged “the Commission to proceed with caution so as not to disrupt processes that are already in place and address the Commission’s concerns, as doing so may result in inefficiencies and increase costs to ratepayers.”<sup>19</sup> UIU also questioned the Penalty Proposal because it was “concerned that creating stricter deadlines while introducing penalties for missing deadlines is far too limiting given the environment we exist in today.”<sup>20</sup> “[P]roposals to revise timelines and penalties without regard to

---

<sup>15</sup> *Id.* at 6.

<sup>16</sup> See <https://dos.ny.gov/utility-intervention-unit-1>.

<sup>17</sup> *Comments of the New York State Utility Intervention Unit*, Docket No. RM22-14-000 (Oct. 13, 2022) (“UIU Comments”).

<sup>18</sup> UIU Comments at 2-3.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 10.

study scope complexities . . . may increase cost burdens on ratepayers and, in this way, prove inefficient.”

The sole New York-based commenter to express differing views was the Alliance for Clean Energy (“ACE NY”).<sup>21</sup> ACE NY did praise certain existing NYISO interconnection processes as superior to NOPR proposals.<sup>22</sup> At the same time, ACE NY asserts that interconnection processes across the country are “severely deficient,” allegedly including in New York where state clean energy goals are supposedly “threatened” by interconnection delays.<sup>23</sup> ACE NY offers no evidentiary support for these claims<sup>24</sup> and they are categorically untrue with respect to the NYISO.<sup>25</sup> They are also belied by the NY State Agencies and UIU, the state entities responsible for implementing the CLCPA and protecting consumers. Neither the NY State Agencies nor the UIU mention “severe” deficiencies in the NYISO’s interconnection process or any threats to clean energy goals in their comments. ACE NY’s assertions therefore do not provide any support for any kind of Commission action in this proceeding, including with respect to the Penalty Proposal. They should be disregarded and given no weight by the Commission.

---

<sup>21</sup> Alliance for Clean Energy New York, *Comments on Notice of Proposed Rulemaking Regarding Improvements to Generator Interconnection Procedures and Agreements*, Docket No. RM22-14-000 (Oct. 13, 2022) (“ACE NY Comments”).

<sup>22</sup> See, e.g., ACE NY Comments at 3.

<sup>23</sup> ACE NY Comments at 2.

<sup>24</sup> ACE NY alludes to the NOPR’s review of Order No. 845 study metrics to allegedly “corroborate the anecdotal experiences of interconnection customers throughout this nation” and as ostensibly demonstrating that the reasonable efforts standard is flawed. But the NYISO has already explained that the NOPR’s proposed rationales for abandoning the reasonable efforts standard are defective and inconsistent with reasoned decision-making. See NYISO Comments at 26-31. ACE NY’s assertions regarding the NYISO’s interconnection process are therefore unsupported by substantial evidence.

<sup>25</sup> The NYISO is not taking any position at this time regarding other transmission providers’ interconnection processes.

## II. The Record Does Not Support the Penalty Proposal, Let Alone Making It Even Worse

The NYISO Comments recommended that the Commission not impose financial penalties on not-for-profit ISOs/RTOs in connection with interconnection studies.<sup>26</sup> The record in this proceeding reflects overwhelming agreement. Many commenters from other regions strongly agree with the NYISO's various objections concerning the proposal's flawed factual assumptions, legal defects, and harmful incentives.<sup>27</sup> Other commenters, including numerous state regulators, are most concerned about the fact that imposing a strict liability penalty regime

---

<sup>26</sup> NYISO Comments at 40-41.

<sup>27</sup> See, e.g., *Initial Comments of the Clean Energy Buyers Association*, Docket No. RM22-14-000 (Oct. 13, 2022) at 10 ("CEBA is concerned that the threat of penalties will create an incentive to prioritize timeliness over accuracy, as the Commission noted in the NOPR. Transmission providers will have less incentive to coordinate with affected systems or even interconnection customers during the interconnection study process, and instead will prioritize completing the studies on time. The result may well be interconnection studies that provide a "bare minimum" approach as opposed to considering the best interconnection scenario in terms of cost-effectiveness and/or efficiency.") (citation omitted); *Initial Comments of the Organization of MISO States, Inc.*, Docket No. RM 22-14-000 (Oct. 13, 2022) ("OMS Comments") at 15 ("OMS is concerned that the introduction of penalties could lead to artificially faster study completion enabled by lower levels of study quality. It is important for the Commission to avoid incentivizing shortcuts or a general lack of thoroughness."); *Initial Comments of PJM Interconnection, LLC*, Docket No. RM22-14 (Oct. 13, 2022) ("PJM Comments") at 56-57 ("In response to the Commission's question as to possible adverse consequences of the proposed penalties, PJM notes that the prospect of monetary penalties for study delays is almost certain to give rise to pressure to prioritize timeliness over accuracy. This would be a serious adverse consequence, as a reduction in study accuracy has the potential to undermine reliability."); *Comments of Eversource Energy Services Company*, Docket No. RM22-14-000 (Oct. 3, 2022) at 36 (asserting that the NOPR's penalty proposal carries "a perverse risk for the process to become dysfunctionally adversarial given that study penalties are remitted to interconnection customers"); *Comments of the Midcontinent Independent System Operator, Inc.*, Docket No. RM22-14-000 (Oct. 13, 2022) ("MISO Comments") at 76 ("[T]he MISO personnel with the knowledge of study delays causes are MISO's Definitive Planning Phase engineers who oversee studies. Taking these engineers away from performing studies to provide evidence in, or judge, continuing disputes over study delays would impair their ability to conduct ongoing studies, producing more delays. In addition, while these disputes are being sorted out, MISO must still depend on the parties to the penalty disputes to continue efficiently processing new studies with the same personnel. The acrimony that such proceedings entail does not engender continued cooperation."); *Initial Comments of ISO New England, Inc.* at 35 (noting that the NOPR's penalty proposal "is also likely to create significant administrative and litigation burden that will disrupt the efficient processing of the interconnection queue and ultimately overwhelming ISO-NE and Commission staffs supporting those matters"). See also *Initial Comments of the ISO/RTO Council*, ("IRC Comments") Docket No. RM22-14-000 (Oct. 13, 2022) (summarizing various legal and policy flaws of the Penalty Proposal.)

on ISOs/RTOs will result in penalty costs being shifted to ratepayers.<sup>28</sup> The Commission continues to recognize the problems with seeking to penalize not-for-profit ISOs/RTOs that lack the means to pay penalties without drawing on funds ultimately recovered from ratepayers.<sup>29</sup>

By contrast, the Penalty Proposal is supported by developer interests and just a handful of others. None engaged with the foreseeable arguments offered by the NYISO and other commenters cataloging the Penalty Proposal's various defects. Fundamentally, it would not be reasoned decision-making for the Commission to adopt penalty supporters', or the NOPR's, faulty premise, that financial penalties are necessary to "increase the priority" that not-for-profit ISOs/RTOs give to interconnection requests and processes.<sup>30</sup> These propositions are simply not supported by substantial evidence in the record. By contrast, The NYISO and others have

---

<sup>28</sup> See, e.g., *Initial Comments of the New England States Committee on Electricity*, Docket No. RM22-14-000 (Oct. 3, 2022) at 16 ("First and foremost, a final rule should ensure that ratepayers do not bear the cost of the penalties. As is recognized by the NOPR, assigning penalties to RTOs/ISOs is complex, or as the NOPR puts it, 'may raise unique issues.' While well intended, the Commission's proposal could result in numerous filings and litigation in RTOs/ISOs, draining the RTO's/ISO's (and others') resources and diverting from the important business of completing studies. This in turn could potentially increase costs to the detriment of ratepayers."); OMS Comments at 15 ("If the Commission concludes that the imposition of penalties on transmission providers or other responsible entities is necessary, OMS is concerned that those costs will ultimately be assessed to ratepayers because MISO is revenue neutral. There is no rational basis to recover penalties from ratepayers, which do not cause the penalties to be incurred and which do not control the study process."); *Initial Comments of the Organization of PJM States, Inc.*, Docket No. RM22-14-000 (Oct. 13, 2022) at 9 ("In no case should the penalties be passed down to ratepayers either directly or indirectly."); *Motion to Intervene and Comments of the National Association of Utility Regulatory Commissioners*, Docket No. RM22-14-000 (Oct. 3, 2022) ("NARUC Comments") ("NARUC fully agrees that in no case should penalties be recoverable in transmission rates. Doing so would defeat the purpose of the penalty and would be contrary to principles of sound ratemaking."); *Comments of the Transmission Access Policy Study Group*, Docket No. RM22-14-000 (Oct. 13, 2022) ("TAPS Comments") at 4-9 (opposing penalty cost pass-throughs to ratepayers and asking FERC to consider alternatives to penalties, or deferring consideration of penalties in ISO/RTO regions until there is more experience with the NOPR reforms.)

<sup>29</sup> See, e.g., *Oklahoma Gas & Electric Corp. v. SPP*, 181 FERC ¶ 612,139 at P 68 (2022) (one of three related orders denying restitution claims against an RTO based on its not-for-profit status and emphasizing that the RTO "as a not-for-profit regional transmission organization entity, has no independent funds and must recoup the refunds ordered by the Commission in this proceeding through charges to its members.")

<sup>30</sup> ACE NY at 2.

demonstrated that it is factually wrong to presume that missed interconnection study deadlines are the result of inadequate efforts by entities such as the NYISO.<sup>31</sup> As noted below, in the NYISO Comments and elsewhere,<sup>32</sup> penalty proponents are equally wrong to claim that the flawed Penalty Proposal will improve study performance.

A few commenters argued for an even harsher penalty regime. For example, ACE NY asked that penalties be set at \$5,000/day “and at a significantly higher level, such as \$25,000/day for the largest clusters.”<sup>33</sup> Several other commenters made similar proposals for higher penalty amounts and other severe measures.<sup>34</sup>

No party that has supported higher penalties has offered any plausible legal justification for the increase.<sup>35</sup> As noted above, they have not addressed the many issues identified by the

---

<sup>31</sup> See, e.g., NYISO Comments at 26-31.

<sup>32</sup> See, e.g., NYISO Comments at 38-40.

<sup>33</sup> ACE-NY at 12.

<sup>34</sup> See, e.g., *Comments of Advanced Energy Economy*, Docket No. RM22-14-000 (Oct. 13, 2022) at 30-31 (calling for higher penalties and a higher maximum penalty cap); *Joint Comments of Affected Interconnection Customers*, Docket No. RM22-14-000 (Oct. 13, 2022) (“Affected Customers Comments”) at 26 (“The Commission should establish a higher penalty for transmission providers who have missed interconnection deadlines, such as a \$2,500 per day penalty capped at \$2,000,000 instead of \$500 per day capped at the amount of the study deposit.”); *Comments of Invenergy Solar Development North America, LLC, et. al.*, Docket No. RM22-14-000 (Oct. 13, 2022) (“Invenergy Comments”) at 30 (proposing maximum penalties of up to \$7,000 per day and that “[t]o the extent any cap is appropriate it should be increased to at least five times the study deposit received.”)

<sup>35</sup> For example, ACE NY’s only support for its call for harsher penalties is that its members “believed” that “\$500/day is not at all sufficient to motivate transmission providers to significantly improve the timeliness or efficiency of their interconnection processes . . . .” ACE NY at 12. Another developer argues that there is no need for the Commission to have concern that penalties “might be punitive” because transmission providers “supposedly ‘have every opportunity to avoid penalties’ because they allegedly ‘control the staffing and study processes and are in the best position to ensure that studies are timely completed.’” See Invenergy Comments at 31. A third complains that the NOPR’s penalties would be a “drop in the bucket” for non-ISO/RTO transmission providers that own billions of dollars of transmission assets. See Affected Customers Comments at 24-25. For the reasons set forth in the NYISO Comments and elsewhere these attempted justifications are clearly inaccurate with respect to not-for-profit ISOs/RTOs and fall far short of what would be legally required to support making the Penalty Proposal even more harsh and inequitable.



Penalty Proposal's opponents, let alone shown how an even more aggressive penalty regime could be lawful.

The Federal Power Act's "just and reasonable" standard, the Administrative Procedure Act's ("APA") "arbitrary and capricious," and Fifth Amendment due process requirements all require that FERC-imposed penalties be fair and proportionate. Any penalty proposal must be supported by substantial evidence demonstrating that it passes muster under each of these standards.

Furthermore, increasing penalty amounts would only make the disincentives and bad policy consequences associated with the original Penalty Proposal even worse. A more severe penalty regime would give ISOs/RTOs an even stronger reason to prioritize meeting study deadlines over study quality with even greater consequences for the accuracy of interconnection analyses and, ultimately, reliability.<sup>36</sup> The intensity of unavoidable disputes over whether an ISO/RTO, a Transmission Provider, or a developer should be held accountable for missing study deadlines would likewise be greater.<sup>37</sup> Litigation over these issues would be more likely, involve higher stakes, and be even more of an impediment to the close collaboration needed to actually improve the interconnection process.<sup>38</sup> Finally, higher penalty amounts would only increase the likelihood that penalties assessed against ISOs/RTOs would have to be passed through to ratepayers, even though virtually all commenters in this proceeding recognize that pass throughs are extremely undesirable.

---

<sup>36</sup> See NYISO Comments at 38-40.

<sup>37</sup> See *Id.* at 39-40.

<sup>38</sup> See, e.g., IRC Comments at 8-9.

### **III. The Commission Should Take More Time to Develop a More Reasonable and Legally Defensible Alternative to the Penalty Proposal**

The NYISO Comments urged the Commission not to impose any kind of penalty regime on not-for-profit ISOs/RTOs. It recommended further enhancements to Order No. 845's interconnection metrics reporting system as the best way to do more to improve accountability in interconnection studies.<sup>39</sup> Alternatively, if the Commission determined that some sort of penalty regime was needed, then the NYISO argued that the Penalty Proposal "must be replaced with an alternative that could satisfy the standards of due process and the [APA]."<sup>40</sup>

A number of commenters,<sup>41</sup> have proposed possible alternatives to the Penalty Proposal. The NYISO has not evaluated all of these suggestions and is not taking a position on any of them at this time. But the Commission should consider them carefully. The NYISO also renews its recommendation that the Commission hold regional technical conferences to identify suitable approaches for each not-for-profit ISO/RTO region. There is still ample time for the Commission to take this approach since the NOPR proposes to give each transmission provider 180 days from the adoption of a final rule to submit compliance filings.<sup>42</sup> It would be entirely appropriate to allow each region to develop accountability measures that best reflect regional circumstances including the number and type of incoming projects and the complexity of the studies that an ISO/RTO must conduct.<sup>43</sup>

---

<sup>39</sup> See NYISO Comments at 31.

<sup>40</sup> *Id.* at 40.

<sup>41</sup> See, e.g., MISO Comments at 79-82; PJM Comments 59-61; *Initial Comments of National Grid PLC*, Docket No. RM22-14-000 (Oct. 13, 2022) at 30-33.

<sup>42</sup> NOPR at 342. The NOPR also proposed that no penalties would actually be imposed until the end of a transition period that would not begin until the effective date of a transmission provider's compliance tariff revisions. See NOPR at P 170.

<sup>43</sup> See, e.g., NYISO Comments at 41; NY State Agencies at 5 ("[W]e urge the Commission to ensure that any final rule in this proceeding is sufficiently flexible to accommodate regional differences, resources, and goals. . . . [I]t is imperative that any final rule impose reasonable deadlines that recognize

## I. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments when considering further action with regards to its NOPR.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan, Senior Attorney, NYISO

/s/ Ted J. Murphy

Ted J. Murphy  
Michael J. Messonnier Jr.  
Hunton Andrews Kurth LLP

*Counsel for the  
New York Independent System Operator, Inc.*

cc: Janel Burdick  
Robert Fares  
Jette Gebhart  
Jaime Knepper  
David Morenoff  
Eric Vandenberg  
Adria Woods

Matthew Christiansen  
Jignasa Gadani  
Leanne Khammal  
Kurt Longo  
Douglas Roe  
Gary Will

---

reliability and includes a process that will allow stakeholders to participate and inform the development of regionally tailored timelines and parameters for customer engagement in cluster studies.”) *See also* TAP Comments at 9 (“The Commission could also hold public technical conferences to better understand the cause of any continued queue processing delays in RTOs, and to identify and encourage process changes that could solve the problem.”); NARUC Comments at 15 (“NARUC further recommends that a technical conference be held prior to any penalty structure becoming effective, allowing transmission providers to publicly discuss lessons learned associated with the new process and to refine the process, as appropriate.”)

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 14<sup>th</sup> day of December 2022.

/s/ Mitchell W. Lucas

Mitchell W. Lucas  
New York Independent System Operator, Inc.  
10 Krey Blvd.  
Rensselaer, NY 12144  
(518) 356-6242