UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Industrial Energy Consumers of America, *et al.*	)	
	)	
v.	)	**Docket No. EL25-44-000**
	)	
Avista Corporation, *et al.*	)	

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission's Rules of Practice and Procedure,[1] and with the Commission's January 7, *Notice of Extension of Time*, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this Answer to the December 19, 2024 "Complaint of Consumers for Independent Regional Transmission Planning for All FERC-Jurisdictional Transmission Facilities at 100 kV and Above" ("Complaint") in this proceeding. The Complaint was filed by a coalition of 22 industrial energy trade associations, consumer advocates and others ("Complainants"). Only one of the Complainants, i.e., Multiple Intervenors, is a NYISO stakeholder. Complainants ask the Commission to require Commission-jurisdictional transmission providers, including the NYISO to: (1) "remove FERC-jurisdictional transmission facilities at 100 kV and above from Local Planning tariffs, and relevant RTO/ISO tariffs;" (2) "require that all planning for transmission facilities 100 kV and above occur at the regional or interregional level;" (3) "require that planning for transmission facilities at 100 kV or above reaching the end of operational life be planned at the regional or interregional level;" and

[1] 18 C.F.R. § 385.213 (2025).

(4) "require that regional planning tariffs be amended to require that [] regional planning . . . be conducted by an independent transmission system planner" ("ITP").[2]

The Complaint should be denied with respect to the NYISO. The NYISO takes no position regarding the Complaint's allegations against the various other named Respondents and other targeted transmission providers. The NYISO is not responsible for transmission planning in other regions and thus will not address potential issues in other regions here.[3] The critical point from the NYISO's perspective is that the Complaint cannot succeed against the NYISO unless the Complaint demonstrates that the NYISO's specific transmission planning rules are unjust and unreasonable. The Complaint fails to make that necessary showing.

The Complaint is procedurally defective because it raises national policy issues that should have been pursued via a petition for rulemaking, or some other form of generic national proceeding, under the Administrative Procedure Act ("APA"). To the extent that the Commission decides to allow the Complaint to move forward as filed, it should deny the Complaint on the merits. Complainants have fallen far short of satisfying their statutory burden to show that the NYISO's existing planning processes are resulting in unjust and unreasonable transmission rates. In particular, Complainants have not supported their claim that a "transmission oversight gap" exists in the single-state NYISO planning region.

Complainants have likewise failed to show that their proposed remedies, i.e., requiring regional planning for all New York transmission facilities larger than 100 kV and compelling the NYISO to either prove that it meets vague new ITP criteria or cede planning responsibilities to an ITP, are just and reasonable. There is also significant reason to suspect that forcing the creation

[2] Complaint at 42-43.

[3] The NYISO's silence with respect to other regions should not be construed as an endorsement of Complainants' allegations concerning them.

of ITPs is beyond the Commission's authority, particularly in light of recent judicial decisions and presidential executive orders.

I. THE COMPLAINT SHOULD BE DENIED BECAUSE IT PROPOSES NEW RULES AND NATIONAL POLICIES THAT THE COMMISSION CAN ONLY ADOPT THROUGH NOTICE AND COMMENT RULEMAKING PROCEDURES AND BECAUSE THE COMPLAINT'S ISSUES ARE ALREADY BEING ADDRESSED IN ANOTHER PROCEEDING

The Complaint raises issues of national scope that have been the subject of other rulemakings, including the ongoing Order No. 1920 proceeding. At its core, the Complaint argues that all Commission-jurisdictional transmission providers' transmission planning rules have become unjust and unreasonable and thus must be substantially modified. Comparable prior changes to transmission planning requirements have been made through rulemaking proceedings that amended the Commission's Part 35 regulations or the *pro forma* open access transmission tariff ("OATT").

The Commission's regulations state that "[a] person must file a petition when seeking: . . . [a] rule of general applicability . . . ."[4] This requirement is rooted in the text of the APA which requires federal agencies to engage in notice and comment "rule making" procedures[5] when "formulating, amending, or repealing a rule."[6] The APA defines a "rule" as the "whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . . ."[7] The Complainants are effectively proposing

[4] *See* 18 C.F.R. § 385.207(a)(4) (2024) ("A person must file a petition when seeking: A rule of general applicability." (emphasis added)).

[5] 5 U.S.C. § 551(5). The APA provides certain exemptions to notice and comment rulemaking procedures in situations not applicable here (*e.g.*, interpretative rules, general statements of policy, or internal agency rules). *See id.* § 553(b)(4)(A)-(B).

[6] *Id.* § 551(5); *see id.* § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.").

[7] *Id.* § 551(5).

to make material additions "of general applicability" to the Commission's transmission planning regulations that should properly be pursued through a new rulemaking. For example, Complainants would require all transmission providers to adopt the proposed ITP standards in regional tariffs,[8] just as earlier Commission rules imposed new *pro forma* tariff provisions. They also ask the Commission to revise the definition of "Regional Transmission Facility" that was established by Order No. 1000-A.[9] It is inconsistent with the APA framework for parties to use complaints to substantially add to the body of transmission planning rules that has evolved through multiple rulemakings such as Order Nos. 890, 1000, and 2000. The Commission should deny the Complaint for this procedural reason alone.[10]

The NYISO recognizes that the Commission has broad authority to manage its own dockets[11] and might conclude that it has discretion to allow the Complaint to move forward. But to the extent that the Commission takes that view, there are several reasons why it should exercise its discretion to deny the Complaint.

For example, the named respondents to the Complaint are differently situated and face different planning challenges. A single complaint proceeding is an unwieldy forum to address a multitude of diverse respondents and region-specific issues.[12] Rulemaking proceedings are a much

[8] *See* Complaint at 239-240.

[9] *See id.* at 242-43.

[10] The NYISO reserves the right to respond, and potentially to object on the merits, if Complainants were to correct their procedural error by filing a new petition for rulemaking.

[11] *See, e.g.*, *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (explaining that agencies have broad discretion over formulation of their procedures); *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003) ("Administrative agencies enjoy 'broad discretion' to manage their own dockets."); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578 (1992) (noting FERC's discretion to mold its procedures according to the particular case).

[12] *Cf, e.g.*, *Midcontinent Indep Sys. Operator, Inc., et al.*, Docket Nos. EL24-80, et al. (2024) (creating separate dockets for each respondent region with regard to the Commission's inquiry into Initial Transmission Owner Funding).

more practicable mechanism for building a record and deciding complex issues of industry-wide significance.

It would also be unreasonably burdensome and inefficient for the Commission to launch a new effort to revamp transmission planning policies at a time when the industry is already heavily engaged in compliance with Order Nos. 1920 and 1920-A. Some regions have already obtained two-year extensions to submit compliance filings,[13] which illustrates the magnitude of the task.

In addition, various issues raised by the Complaint are already being addressed in other proceedings, including by individual Complainants. Order No. 1920 adopted requirements to improve the transparency of local transmission planning processes and coordination between regional and local processes.[14] Order No. 1920 also addressed opportunities to "right size" replacement transmission facilities.[15] Thus, the Commission has already taken actions that respond to some of Complainants' stated concerns. An omnibus complaint against a host of transmission providers that seeks to relitigate issues that the Commission has recently decided would be a distraction and a waste of the Commission's and parties' resources, particularly when Order Nos. 1920 and 1920-A remain pending on judicial review and compliance filings are still under development.

Similarly, a number of the issues raised in the Complaint are already pending in Docket No. AD22-8, i.e., "Transmission Planning and Cost Management." In several instances, Order

[13] *See, e.g.*, *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection*, Notice of Extension of Time, Docket No. RM21-17-000 (February 10, 2025) (granting ISO New England Inc.'s requested extension of its regional and inter-regional compliance filing deadlines to June 14, 2027).

[14] *See Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection*, Order No. 1920, 187 FERC ¶ 61,068, at §§ IX.A, B, *order on reh'g*, Order No. 1920-A, 189 FERC ¶ 61,126 (2024).

[15] *See* Order No. 1920 at § IX.C.

No. 1920 emphasized that Docket No. AD22-8 was the appropriate proceeding for these issues.[16] Specifically, the Commission held a technical conference in Docket No. AD22-8 "to discuss transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes."[17] Complainants' ITP proposals are an offshoot of the Independent Transmission Monitor ("ITM") concepts that were extensively debated in the technical conference and subsequent comments.[18] Some of the Complainants have separately filed comments in Docket No. AD22-8,[19] presumably in response to the Commission's statement in Order No. 1920 that issues touching local transmission planning "may be examined in the Commission's ongoing Transmission Planning and Cost Management proceeding."[20]

One party in the Docket No. AD22-8 proceedings, RMI, made a substantial filing on December 12, 2024, i.e., shortly before the Complaint was filed, calling for multiple potential transmission planning reforms.[21] RMI's proposals mirrored those urged by the Complaint. RMI proposed the creation of ITMs, along with various changes to regional and local transmission

[16] *See, e.g.*, *id.* P 1648 ("Many commenters suggest additional reforms because these commenters find the NOPR proposal insufficient. These suggested reforms include additional measures to protect customers' interests and additional process, more oversight, more monitoring (including establishing an independent transmission monitor), or prudence reviews; requiring RTOs/ISOs to assume a larger role in reviewing or approving identified local transmission projects; . . . We note, however, that several of these issues may be examined in the Commission's ongoing Transmission Planning and Cost Management proceeding."); *id.* P 1632 (same); *see also* Order No. 1920-A at P 793 (rejecting Industrial Customers argument that FERC was required to address cost containment concerns in Order No. 1920 instead of deferring them to Docket No. AD22-8).

[17] Notice of Technical Conference, Docket No. AD22-8 (Apr. 21, 2022).

[18] *See, e.g.*, Transcript of Transmission Planning and Cost Management Technical Conference, Docket No. AD22-8 (Oct. 6, 2022); Post-Technical Conference Comments of the ITM Coalition, Docket No. AD22-8 (filed Mar. 23, 2023); *see also* Notice Inviting Post-Technical Conference Comments, Docket No. AD22-8 at 7 (Dec. 23, 2022) (inviting discussion on the Independent Transmission Monitor proposal).

[19] *See, e.g.*, Post-Technical Conference Comments of the ITM Coalition, Docket No. AD-22-8; Post-technical Conference Comments of the R Street Institute, Docket No. AD22-8 (filed Mar. 23, 2023).

[20] *See* Order No. 1920 at P 1648.

[21] Comment of RMI, Docket No. AD22-8 (filed Dec. 12, 2024).

planning rules.[22] RMI asserted that "[t]he evidence illustrates how the increase in unchecked spending on local transmission has resulted in unjust and unreasonable transmission rates."[23] In total, RMI outlined "11 key recommendations" for closing the alleged "regulatory gap that results in different levels of scrutiny between local and regional projects."[24] Complainants should have made their very similar proposals in Docket No. AD22-8.

In short, to the extent that the Commission has discretion, it should exercise it to deny the Complaint because the Complainants seek to raise issues that should have been presented as a petition for rulemaking and that are already under consideration in other dockets addressing policy questions of national interest.

II. COMPLAINANTS HAVE NOT MET THEIR BURDEN OF PROOF TO DEMONSTRATE THAT THE NYISO'S EXISTING PLANNING ARRANGEMENTS ARE PRODUCING UNJUST AND UNREASONABLE TRANSMISSION RATES

If the Commission does not deny the Complaint on procedural grounds, then it should do so on the merits with respect to the NYISO because the Complainants have not met their burden of proof. The Complaint's underlying theory is that for-profit transmission-owning utilities are allegedly exploiting local transmission planning processes to favor their own interests in ways that are producing unjust and unreasonable transmission rates, and that existing Independent System Operators and Regional Transmission Organizations ("ISOs/RTOs") have failed to prevent. But the Complaint wholly fails to show that any of this is true for the NYISO planning region.

Under FPA sections 206 and 306, the Complainants must demonstrate that each individual transmission provider's tariff is unjust and unreasonable in order to obtain relief. Generalized and

[22] *See id*. at 1-2, 41-43.

[23] *Id*. at 1.

[24] *Id*.

conclusory allegations regarding industry-wide concerns are not sufficient. Even if the Commission determines that some other transmission providers' planning arrangements are unjust and unreasonable, that would not be a basis for making the same finding with respect to the NYISO.

FPA section 206 places "the burden of proof to show that any rate . . . is unjust, unreasonable, unduly discriminatory, or preferential . . . upon the . . . complainant."[25] The NYISO, as a respondent, is not obliged to demonstrate that its existing tariff provisions are just and reasonable. Instead, Commission Rule 206 "requires parties filing a complaint to provide all documents in support of the facts in the complaint."[26] "[T]he Commission has repeatedly stated that rather than bald allegations, a complainant must make an adequate proffer of evidence including pertinent information and analysis to support its claims."[27] Further, "[w]ithout a showing that the existing rate is unlawful," the Commission "has no authority to impose a new rate."[28] Only after the Commission finds that a rate is unjust and unreasonable, does the Commission bear the burden of determining a new just and reasonable rate."[29]

The Complaint and its attachments are well over four hundred pages long. Yet the Complaint offers almost no evidence concerning the NYISO, New York, or alleged Local Planning problems in the NYISO region. Indeed, the Complaint's New York-specific discussions amount to approximately three pages of text. None of what the Complaint does say is sufficient to meet

[25] 16 U.S.C. § 824e(b).

[26] *La. Pub. Serv. Comm'n v. Sys. Energy Res., Inc.*, 124 FERC ¶ 61,003, at P 15 n.9 (2008); 18 C.F.R. § 385.206(b)(8).

[27] *Coal. of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy, Inc.*, 183 FERC ¶ 61,057, at P 28 (2023) (cleaned up).

[28] *Emera Maine v. FERC*, 854 F.3d 9, 24-25 (D.C. Cir. 2017).

[29] *See New Eng. Power Generators Assoc., Inc. v. FERC*, 879 F.3d 1192, 1200 (D.C. Cir. 2018) (citing *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 663 (D.C. Cir. 2017)).

its burden of proof. The Complainants have not demonstrated that local transmission planning arrangements in New York have resulted, or would result, in unjust or unreasonable transmission rates.

Complainants overlook that Order No. 1920 required all transmission providers to revise their tariffs to enhance the transparency of: (1) the criteria, models, and assumptions used in the local transmission planning process; (2) the local transmission needs identified through the local transmission planning process; and (3) the potential local or regional transmission facilities evaluated to address local transmission needs.[30] The Commission likewise required transmission providers to evaluate whether transmission facilities in need of replacement could be right-sized to more efficiently address Long-Term Transmission Needs after determining that there was insufficient coordination between local and regional transmission planning processes regarding replacement of aging infrastructure.[31] And as discussed, the Commission is further evaluating improvements to local transmission planning in Docket No. AD22-8. The Commission should provide time for Order No. 1920's proposed local transmission planning reforms, and any reforms that arise from the proceedings in Docket No. AD22-8, to be implemented rather than predetermining that they will not ameliorate the issues raised in the Complaint.

Specifically, the Complaint references 62 transmission projects adopted in 2023 "ostensibly" in support of New York State's Climate Leadership and Community Protection Act.[32] Simply saying "ostensibly" in an attempt to imply some kind of impropriety does not satisfy Complainants' burden to demonstrate that there was anything unjust, or unreasonable, about the selection of these projects. In addition, Complainants assert that the referenced projects "will

[30] *See* Order No. 1920 at P 1625.

[31] *See id.* PP 1573, 1577.

[32] *See* Complaint at 151-52.

undoubtedly have a regional impact by reducing congestion in certain regions of New York, yet they were planned by individual transmission owners."[33] But the Complaint does not satisfy its burden of presenting tangible evidence that any regional impacts would result in unjust and unreasonable transmission rates in New York.

The Complaint also references Con Edison's 345 kV Brooklyn Clean Energy Hub project.[34] Complainants allege that had the NYISO planned it as a public policy project, "it is likely that competitive sponsors would have allowed NYISO and the NYPSC to select a more efficient or cost-effective solution to address the reliability need."[35] Because this assertion is not supported with substantial evidence, it too must be dismissed as conclusory and speculative. And even if it were true that a slightly different result might have been reached under different rules, that does not make the NYISO's currently effective rules unjust or unreasonable under the FPA's just and reasonable standard.

The Complaint does include more extensive allegations regarding specific alleged local transmission planning problems in other regions.[36] But even if the Complaint's assertions as to other regions were valid, which the NYISO does not concede, they would be irrelevant to the question of whether the NYISO's transmission planning rules are just and reasonable.

Beyond its particular region-specific claims, the Complaint is based almost entirely on a generalized economic theory, namely, that for-profit transmission-owning public utilities have incentives to use the transmission planning process to advance their own financial interests.[37] That

[33] *Id.* at 151.

[34] *See id.* at 152-53.

[35] *Id.* at 153.

[36] *See, e.g.*, *id.* at 70-88 (discussing PJM Interconnection, L.L.C.); *id.* at 88-106 (discussing Midcontinent Independent System Operator, Inc.).

[37] *See, e.g.*, *id.* at 37 ("This increase in Locally Planned transmission additions was not because individual transmission owner planning was the best approach for consumers, or even the Commission's preferred approach,

assertion is far from sufficient to satisfy Complainants' burden of proof with respect to the NYISO. Economic theory can sometimes provide a basis for Commission action but is inadequate to justify overturning and replacing established arrangements in New York. Merely alleging that transmission owners generally have incentives to exploit the local transmission planning process, as Complainants do, is not itself evidence that any specific planning regime is unjust and unreasonable or that exploitation is actually occurring. Complainants are effectively asking the Commission to presume that rates are unjust and unreasonable without demonstrating any actual adverse consequences to New York ratepayers. They do not consider or address safeguards, such as the Commission's extensive regulatory framework designed to prevent transmission owners from taking unfair advantage of transmission market power, including the establishment of ISOs and RTOs.

The Complaint does not even consider that the NYISO is an ISO for a single-state planning region. Commission precedent has repeatedly recognized that single-state regions face different issues than multi-state regions. Chairman Christie has often emphasized that there is no need for the Commission to second guess or override decisions made in single-state regions because they are unlikely to impose material costs on ratepayers in other states.[38] The Complaint certainly has

but because of the transmission owner's individual obligations to investors, *i.e.*, its self-interest."); *id.* ("Xcel Energy provides a perfect demonstration that economic self-interest geared toward investors, rather than consumers, will always prevail."); *id.* at 38 ("Of course, if transmission providers are unable or unwilling to effectively compete on design and cost and the Commission has provided them with an opportunity to avoid that requirement, not only will they seize that opportunity, but they would have an obligation to shareholders to take it. There is no effective regulatory check on the investor incentive to plan locally as long as Local Planning remains available." (citation omitted)).

[38] *See, e.g.*, *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,053, (Christie, Comm'r concurring) at P 2 (2024) (comparing NYISO and PJM and stating that "NYISO is a single-state ISO, and a single-state ISO should quite properly reflect the public policies of that individual state"); *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101, (Christie, Comm'r concurring) at P 5 (2022) ("[N]o one has suggested that this single-state ISO's proposal to accommodate the resource decisions made by the New York legislature will harm consumers in other states. Thus, there being no evidence in this record that citizens of other states will be made to pay for New York's policy decisions through the potential impacts of NYISO's proposed tariff revisions, I conclude that any costs will be confined to New York. Based on the particular set of facts in this record, I do not find that the NYISO proposal 'as-applied' results in rates that are 'unjust, unreasonable and unduly discriminatory or preferential' under the FPA. If

not shown that there is any kind of "transmission oversight gap" in New York given the substantial role that the New York State Public Service Commission plays in transmission planning. The Complaint is silent about the many successes of the NYISO's public policy transmission planning process, which has selected many projects to address regional needs driven by New York State policies.

The Commission has also long allowed different ISOs/RTOs to adopt varying rules that best reflect regional needs and circumstances.[39] It would be arbitrary and capricious for the Commission to depart from its policy of distinguishing single-state regions without a clearly articulated and persuasive justification.

The Complaint also fundamentally misapplies the FPA's just and reasonable standard. It inverts the two-step process under FPA section 206 by attempting to persuade the Commission that the sweeping remedies that the Complainants urge are superior to existing local planning procedures, and thus all existing local planning regimes must be found universally unjust and unreasonable.[40] The fact that Complainants can imagine or point to alternative rules that they

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the people and businesses of New York do not like the impacts of their new state laws, their recourse is to the ballot box.").

[39] *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121, at n.39; *Calpine et al. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239, at P 204, n.431 (2019) ("As the Commission has previously explained, regional markets are not required to have the same rules. Our determinations about what rules may be just and reasonable for a particular market depends on the relevant facts.") *N. Y. Pub. Serv. Comm'n*, 153 FERC ¶ 61,022, at P 38 (2015) (stating that "[w]hether the Commission has found certain exemptions from buyer-side market power mitigation in . . . any other region to be just and reasonable is not dispositive of whether the Commission should find NYISO's buyer-side market power mitigation rules to be unjust and unreasonable absent similar exemptions"); *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 47 ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions."), *order on clarification, reh'g, & compliance*, 152 FERC ¶ 61,110 (2015).

[40] *See Emera Maine*, 854 F.3d at 24 ("[S]ection 206 required FERC to make an explicit finding that Transmission Owners' existing rate was unjust and unreasonable before proceeding to set a new rate.").

believe to be superior does not mean that they have shown that existing rules in the NYISO are unjust or unreasonable.[41]

Complainants substantially rely on language from the Commission's Advanced Notice of Proposed Rulemaking ("ANOPR") and Notice of Proposed Rulemaking ("NOPR") in Docket No. RM21-17 that eventually led to Order No. 1920, as well as comments submitted by parties in that proceeding.[42] However, the ANOPR and NOPR statements that the Complaint leans on are either irrelevant or concern policy proposals the Commission considered but *declined* to adopt. For example, the Commission did not accept the ITM concept that the Complaint attempts to revive in a modified form.[43] ANOPR and NOPR language that was not incorporated into Order Nos. 1920 or 2023 is in no way binding on the Commission.[44] The fact that certain ANOPR and NOPR proposals were rejected is at least as salient as the fact that they were initially considered. Those preliminary proposals are certainly not determinations or "evidence" that can be cited to support the Complaint.

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[41] *See, e.g.*, *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (stating that a proposal under FPA section 205 "need not be the only reasonable methodology, or even the most accurate"); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (finding that the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"); *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006) ("[T]he just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate' standard. Rather, a range of alternative approaches often may be just and reasonable."), *order on reh'g sub nom. E.ON U.S. LLC*, 116 FERC ¶ 61,020 (2006).

[42] *See, e.g.*, Complaint at 28 (quoting NOPR at PP 34, 36); *id.* at 35 (citing NOPR at PP 40, 344 and quoting same at P 350); *id.* at 63-64 (quoting ANOPR at PP 17, 26, 61); *see also id.* at 64 (citing Comment of the Harvard Electricity Law Initiative, Docket No. RM21-17 (Aug. 17, 2022); Initial Comments of American Municipal Power, Inc., Docket No. RM21-17 at 11 (Aug. 17, 2022)).

[43] *See, e.g.*, Order No. 1920 at P 247, *cited in* Complaint at 64 ("The Commission chose to do nothing in Order No. 1920, notwithstanding that the Commission found 'the record demonstrates that a substantial amount of new transmission investment is occurring outside of regional transmission planning processes.'") (mistakenly citing ANOPR at P 247).

[44] *See, e.g.*, *Bos. Edison Co.*, 34 FERC ¶ 63,023, at 65,083 (1986) ("[T]he April 1984 proposed rulemaking … regarding cash working allowances is not binding since it was not in effect at the time of BEC's filing nor is it presently effective."); *Pub. Serv. Co. of Ind., Inc.*, 3 FERC ¶ 63,038, at 65,274 (1978) ("Because our Notice of Proposed Rulemaking has *not yet been acted upon and binding*, we do not rest our decision upon these factors." (emphasis added)).

The Complaint likewise attempts to build on various comments and documents filed by other parties in the Order No. 1920 proceeding that were critical of existing local transmission planning procedures. However, those statements are litigation positions, not evidence.[45] The litigation positions taken by other parties in a different proceeding cannot justify declaring existing planning arrangements unjust or unreasonable.

The fact that the Commission did not adopt Complainants' proposed measures in Order No. 1920, and instead focused on long-term regional planning issues and relatively limited local transmission planning changes, militates against granting the Complaint. The Commission should require a very persuasive evidentiary showing before finding that existing planning arrangements are unjust and unreasonable when the Commission has just concluded that compliance with Order No. 1920's more limited reforms suffice to make transmission planning arrangements just and reasonable.[46]

The Giberson Affidavit does not provide any of the evidentiary support that the Complaint is missing. It consists entirely of a review of past Commission proceedings and general arguments rooted in economic policy. Mr. Giberson says nothing specific or concrete about the NYISO. Similarly, none of the other pending local transmission planning proceedings identified by the Complaint[47] involve the NYISO.

[45] *See* Complaint at 64 (citing comments filed by the Harvard Electric Law Initiative and American Municipal Power).

[46] *See, e.g.*, Order No. 1920 at i ("These reforms are intended to ensure that existing regional and local transmission planning and cost allocation requirements are just, reasonable, and not unduly discriminatory or preferential.").

[47] *See* Complaint at Part VI.F.

III. COMPLAINANTS HAVE NOT MET THEIR BURDEN TO DEMONSTRATE THAT THEIR PROPOSED REPLACEMENT RATES ARE JUST AND REASONABLE AS APPLIED TO THE NYISO

Just as the Complainants have not demonstrated that the NYISO's existing tariffs are producing unjust and unreasonable transmission rates, they have likewise not justified their proposed replacement rates as necessary or just and reasonable. Accordingly, if the Commission were to find that Complainants satisfied the first step under FPA section 206, it would fall on the Commission to satisfy the second step.

A. The Complaint Does Not Demonstrate that Requiring All Transmission Facilities Larger than 100 kV to be Governed by Regional Transmission Planning Is Just and Reasonable in the NYISO Region

Complainants have failed to show that mandating regionalized transmission planning for all transmission facilities larger than 100 kV is a just and reasonable remedy for the NYISO region. The Complaint does not offer any explanation of why the NYISO's current list of bulk power facilities subject to its planning authority, or the process for developing that list, is unjust and unreasonable. It has not demonstrated that it is unjust and unreasonable to preserve the division of transmission planning responsibilities among the NYISO and the New York Transmission Owners, which was accepted by the Commission as consistent with Order Nos. 890 and 1000, and which was not disturbed by Order No. 1920.

Generalized allegations cannot establish that the NYISO must use a 100 kV threshold to assign regional and local planning responsibilities. Complainants' argument for regionalizing planning for all facilities over 100 kV boils down to their assertion that it is "logical" to do so.[48] This is supposedly the case because the Commission and the North American Electric Reliability Corporation ("NERC") have adopted 100 kV as the default threshold for determining whether

[48] Complaint, Attach. B, Decl. and Testimony of Michael A. Giberson at 33:10.

transmission facilities are part of the Bulk Electric System ("BES").[49] But even given that the 100 kV threshold has been found to be just and reasonable for enforcing planning-related mandatory reliability standards, the Complaint has failed to demonstrate that using the same threshold is the only possible just and reasonable method for assigning planning functions in New York.

As the Commission and reviewing courts have confirmed in the reliability context, "the 100 kV threshold is used only to set a preliminary jurisdictional boundary, which is always subject to generally applicable adjustments and, upon request, to individualized ones."[50] The United States Court of Appeals for the Second Circuit has explained that there are "nine generally applicable adjustments . . . based on pre-defined inclusions and exclusions from the bulk electric system without regard to the operating voltage threshold" and "two individualized adjustments [that] (1) afford facilities subject to federal jurisdiction technical exemption from reliability requirements, or . . . (2) provide for FERC to conduct a holistic review of whether a particular facility is used in local distribution so as to fall outside federal jurisdiction."[51] By contrast, Complainants take a rigid approach that disregards the need for flexibility to make adjustments based on region-specific considerations.

The Complaint fails to articulate any reason why it might be unjust and unreasonable to use something other than the default voltage level for mandatory reliability requirements to determine the boundary between regional and local planning functions in New York. The Complaint fails to acknowledge that an appropriate threshold for imposing mandatory reliability requirements may not be the same as an appropriate threshold for transmission planning. It does

[49] *See* Complaint at 207-16.

[50] *New York v. FERC*, 783 F.3d 946, 955 (2d Cir. 2015).

[51] *Id.*; *see id.* n.4 (listing the nine adjustments set out in *Revisions to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 773, 141 FERC ¶ 61,236 at PP 13, 18 (2012), *clarified and reh'g denied*, Order No. 773–A, 143 FERC ¶ 61,053 (2013).

not consider the differences between the purposes served by reliability standards and transmission planning processes.

Finally, the Complaint is silent concerning the specific arrangements that the NYISO and its transmission-owning members have negotiated to allocate reliability compliance and transmission planning responsibilities. A Coordinated Functional Registration Agreement makes the NYISO the sole Planning Coordinator for the New York Control Area under NERC's compliance registry criteria.[52] Thus, the NYISO must demonstrate compliance with all applicable NERC planning standards. However, the NYISO's transmission planning responsibilities under its Commission-jurisdictional OATT encompass a list of New York Bulk Power Transmission Facilities ("BPTF List") that was developed to serve different objectives than NERC's list of BES transmission facilities. The Complaint has not shown that the use of the BPTF List instead of a 100 kV threshold produces unjust and unreasonable transmission rates in New York.

B. The Complaint Does Not Demonstrate that its ITP Proposal Is Just and Reasonable, Particularly as Applied to the NYISO

Complainants have not satisfied their burden to demonstrate that their proposed ITP requirements would be just and reasonable as applied to the NYISO. The Complaint offers nothing but speculation and conclusory allegations concerning the NYISO's supposed lack of adequate independence to continue to administer its regional planning responsibilities. Complainants have not made a sufficient evidentiary showing to justify questioning the NYISO's compliance with all applicable independent planning requirements under Order Nos. 888, 890, or 1000 or the NYISO's compliance with its tariffs' transmission planning requirements.

Complainants' proposed ITP independence criteria are also vague and internally inconsistent. No attempt has been made to explain why specific requirements are needed,

[52] *See* NERC Rules of Procedure Section 508; NERC Rules of Procedure App. 5B, n.6.

practicable, or consistent with existing law or regulations. For example, Complainants would require the NYISO to establish that it is sufficiently independent to administer regional planning by making a showing beyond the requirements of Order No. 888 that the Commission has previously found that the NYISO meets. The Complaint offers no evidence that the NYISO has failed to act independently, asserting only that transmission owners in unspecified regions have too much influence over ISO and RTO decisions.

Nevertheless, the Complainants would require the NYISO to undergo some sort of "review of the governance and voting process for tariff changes and planning rules without undue transmission owner influence. . . ."[53] Complainants state that the "Commission must direct the revision of any RTO/ISO governing documents, including agreements between the RTO/ISO and the owners of the transmission facilities, to ensure that those governing documents do not impede, restrain, or hamper the RTO/ISO from truly planning independently."[54] But Complainants simultaneously say that their requested relief "is not suggesting that the Section 205 filing rights of Order No. 1000 regions are provided or changed."[55] It is unclear what is intended, especially in the NYISO context where the Commission has found that the NYISO's shared governance system, under which the NYISO may ordinarily only submit section 205 filings with super-majority stakeholder support, is consistent with existing ISO independence requirements. Complainants' contradictory and unsupported assertions fall short of what would be necessary to justify the revisions to ISO/RTO governance documents that they believe would "likely"[56] be needed if the Complaint were granted.

[53] Complaint at 239.

[54] *Id*. at 241-42.

[55] *Id*. at 240.

[56] *Id*. at 242.

More generally, the proposed independence criteria appear to require a degree of ITP separation from transmission that could be inefficient and could produce sub-optimal results. Complainants must show that their vaguely defined heightened independence requirements would not impede transmission planning by imposing excessive restrictions on coordination between ISOs/RTOs and Transmission Owners.

The Complaint likewise does not justify requiring ITP plans to be filed at the Commission for "informational purposes." The Complaint's suggestion that the Commission should also potentially review (and possibly modify) completed transmission plans will make the planning process slower and more difficult.

Establishing an ITP and defining its relationship with the NYISO, the Market Monitoring Unit, and New York State entities would be redundant, expensive, time-consuming, and distracting at a time when the NYISO is already focused on multiple other important compliance matters involving generation interconnection and transmission planning. Even requiring the NYISO to develop a filing and demonstrate its compliance with the proposed new ITP criteria would be an unjustified burden given the Complaint's failure to show either that NYISO's current transmission planning rules are unjust and unreasonable or that the ITP would be a just and reasonable remedy.

IV. THE COMPLAINANTS REQUEST RELIEF THAT THE COMMISSION MAY NOT HAVE LEGAL AUTHORITY TO IMPOSE

Even if Complainants had satisfied their burden of proof to show that the NYISO's existing transmission planning arrangements were unjust and unreasonable, and that their proposed replacement rate was just and reasonable, there would be questions concerning the Commission's authority to impose Complainants' desired relief. Some of these potential limits are a result of major Supreme Court decisions issued in the years after Order Nos. 890 and 1000. The Supreme

Court might soon adopt additional relevant new restrictions.[57] A Commission order granting Complainants' relief might also be deemed to be contrary to recent executive orders directing agencies to hew closely to recent Supreme Court guidance.[58] The Commission should therefore take a measured approach that carefully accounts for these new considerations.

First, to the extent that the Complaint would require the formation of an ITP as a separate corporate entity in New York, the Commission would not have the authority to compel the ITP's creation. The FPA does not permit the Commission to force public utilities, including traditional transmission providers and ISOs/RTOs, to create ITPs. FPA section 202[59] and *Atlantic City Elec. Co. v. FERC* establish that regional coordination is "left to the 'voluntary' action of the utilities."[60] "[FPA section 202] does not provide FERC with any substantive powers 'to *compel* any particular interconnection or technique of coordination."[61] The Commission did not mandate ISO formation in Order No. 888 or dictate the involuntary formation of RTOs in Order No. 2000 because it lacked statutory authority to do so. RTO formation (and membership) remains voluntary as a matter of federal law. Similarly, the Commission cannot require transmission owners to cede control over their transmission facilities by requiring that an ITP take over transmission planning.

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[57] *See FCC v. Consumers' Research*, Brief for the Respondents, Case No. 24-354 (Feb. 11, 2025) (arguing that the FCC's taxing power scheme under Section 254 of the Telecommunications Act of 1996 violates original and modern interpretations of the nondelegation doctrine).

[58] *See, e.g.*, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, Executive Order No. 14219 at § 2 (Feb. 19,.2025) (emphasizing that federal agencies should rescind: (ii) regulations that are based on unlawful delegations of legislative power; (iii) regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition; [and] (iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority; . . .").

[59] 16 U.S.C. § 824a.

[60] 295 F.3d 1, 12 (D.C. Cir. 2002); *see* 16 U.S.C. § 824a(a) ("[T]he Commission is empowered and directed to divide the country into regional districts for the *voluntary* interconnection and coordination of facilities for the generation, transmission, and sale of electric energy." (emphasis added)).

[61] *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 12 (D.C. Cir. 2002) (quoting *Duke Power Co. v. FPC*, 401 F.2d 930, 943 (D.C. Cir. 1968) (emphasis in original)).

For example, in *California Independent System Operator Corp. v. FERC*,[62] the D.C. Circuit rejected a Commission order purporting to replace the governing board of the California Independent System Operator ("CAISO"). The Court held that the Commission's "affecting" jurisdiction under FPA section 205 does not extend to corporate governance issues because that is not a practice that will "directly affect" rates,[63] and the Supreme Court subsequently adopted that standard in *FERC v. EPSA*.[64] The Commission likewise cannot compel transmission owners to create, or require ISOs/RTOs to "spin off" new corporate entities in the form of ITPs.

The Commission's authority to mandate the formation of new corporate entities is further attenuated after the Supreme Court's recent decision in *Loper Bright v. Raimundo*,[65] which overruled "*Chevron* deference" and clarified that courts may not defer to agency interpretations of ambiguous statutory provisions.[66] Thus, there is now even less basis for the Commission to mandate the formation of new private entities.

Regionalizing all transmission planning for facilities larger than 100 kV and imposing ITPs would also violate the "major questions" doctrine. That doctrine prevents agencies from "asserting highly consequential power beyond what Congress could reasonably be understood to have granted."[67] As such, courts look with skepticism on agency attempts to justify major new policy

[62] 372 F.3d 395 (D.C. Cir. 2004).

[63] *Id.* at 403; *see id.* at 401 ("FERC apparently would have us hold that the existence of an 'infinitude' of practices supposes that there is also an infinitude of acceptable definitions for what constitutes a 'practice' to give it the authority to regulate anything done by or connected with a regulated utility, as any act or aspect of such an entity's corporate existence could affect, in some sense, the rates. We are not biting.").

[64] 577 U.S. 260, 278 (2016).

[65] 603 U.S. 369 (2024).

[66] *Id.* at 413 ("Courts need and under the APA *may not* defer to an agency interpretation of the law simply because a statute is ambiguous." (emphasis added)).

[67] *West Virginia v. EPA*, 597 U.S. 697, 724 (2022).

actions based on ambiguous statutory language, especially if an agency attempts to base newly asserted authority in statutory language that was never used for that purpose previously.[68]

Finally, forcing the creation of ITPs could also violate the non-delegation doctrine, which limits the ability of the Commission to delegate its core statutory functions and decision-making authority to private entities.[69] One of the Commission's primary responsibilities under FPA sections 205 and 206 is to determine the justness and reasonableness of transmission rates.[70] It is the Commission's duty to review transmission provider spending and the reasonableness and efficiency of transmission facility costs. Complainants' proposed ITP arrangements would infringe on functions properly reserved to the Commission, e.g., by requiring that ITPs be "[a]ble to review non-transmission solutions to identified needs including cost recovery"[71] and to conduct competitive processes, including qualification and selection of more efficient or cost effective solutions.[72] The Supreme Court will soon hear arguments in a case that raises important questions regarding an executive agency's ability to delegate statutory decisionmaking authority to private parties.[73] The case may implicate the Complainants' ITP proposal. The Commission should be cautious not to grant relief that might conflict with a Supreme Court ruling that is expected later this year.

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[68] *See id.*

[69] *See, e.g., U.S. Telecom Assoc. v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004) ("[W]hile federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities—private or sovereign—absent affirmative evidence of authority to do so.").

[70] *See* Order No. 1920-A at P 639 (2024) ("[T]he Commission has a statutory responsibility to review the compliance filings from transmission providers to ensure that any proposed cost allocation is just and reasonable and not unduly discriminatory or preferential."); 16 U.S.C. §§ 824d, 824e.

[71] Complaint at 235.

[72] *See id.*

[73] *See FCC v. Consumers' Research*, cert. granted, Case No. 24-354 (oral argument scheduled for Mar. 26, 2025).

V. THE COMPLAINT DOES NOT COMPLY WITH THE COMMISSION'S PLEADING REQUIREMENTS

The Commission should deny the Complaint for its failure to comply with the Commission's pleading requirements. The Complaint not only lacks evidentiary support, as discussed throughout this Answer, but it also fails to comply with the Commission's rules.[74] The Complaint fails to adequately identify or explain its claim, quantify financial impacts, or specify existing proceedings where the issues raised in the Complaint are already being addressed. It should thus be denied.

A. The Complaint Does Not Identify or Adequately Explain Its Claims

A complaint must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements"[75] and explain how the action or inaction violates them.[76] The Complaint meets neither of those requirements.

Complainants argue under Commission Rule 206(b)(1) that the action allegedly violating the applicable standards and requirements is "the retained ability of individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kV and above at their discretion based on criteria they determine."[77] The Complaint is full of conclusory allegations and assertions that local planning leads to unjust and unreasonable transmission rates.[78] But the Complaint lacks any specific claims as to harms committed by the NYISO. At best, Complainants imagine a hypothetical alternate universe where a 345 kV substation project could have "been regionally

[74] *See CAlifornians for Renewable Energy, Inc. v. Cal. Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,143, at P 18 (2013).

[75] 18 C.F.R. § 385.206(b)(1).

[76] *Id.* § 385.206(b)(2).

[77] Complaint at 53.

[78] *See, e.g., id.*

planned by NYISO as a public policy project, … [and] that competitive sponsors would have allowed NYISO and the NYPSC to select a more efficient or cost-effective solution."[79] Neither that statement, nor the Complaint's terse discussion of local planning within New York, provide specific allegations of real, identifiable harm inflicted by the NYISO on the Complainants.

The Complaint likewise fails to explain how any action or inaction violates statutory standards or regulatory requirements. Under the section discussing Rule 206(b)(2), the Complaint alleges that "the violation is the failure of local planning to ensure just and reasonable rates as existing tariffs that allow individual transmission owners to plan regionally impactful transmission 100 kV and above are practices directly affecting rates."[80] Again, the Complaint only identifies "billions of dollars in locally planned transmission" but does not connect that to any violation of statutory or regulatory requirements involving the NYISO.[81]

B. The Complaint Does Not Quantify the Harms to Complainants

The Complaint failed to make a "a good faith effort to quantify the financial impact or burden (if any) created for the complainant because of the action or inaction."[82] Despite compiling a table of ongoing locally planned projects in the NYISO, Complainants do not show that these projects were unnecessary or caused rates to be unjust and unreasonable.[83] Complainants confine their analysis to pointing out that a number of locally planned projects have moved forward in New York.[84] Complainants wrongly treat the cited costs as if they were *prima facie* evidence of unjustness and unreasonableness.

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[79] *Id.* at 153.

[80] *Id.* at 246.

[81] *Id.* at 247.

[82] *Id.* § 385.206(b)(6).

[83] *See* Complaint at 152.

[84] *See id.* at 151-52.

C. The Complaint Failed to Identify the Proceedings in Docket No. AD22-8.

The Commission's rules require that the Complaint "[s]tate whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum."[85] Despite citing to filings in the ongoing proceedings in Docket No. AD22-8, Complainants did not disclose that some of the issues raised in the Complaint are pending in that docket.[86] The Commission directed parties to pursue local planning reforms in that docket during the Order No. 1920 proceedings.[87]

VI. COMPLIANCE WITH COMMISSION RULE 213(C)(2)

A. Admissions and Denials

In accordance with 18 C.F.R. § 385.213(C)(2)(i), except as stated in this Answer, the NYISO does not admit any facts in the form and manner stated in the Complaint. The NYISO affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.

B. Affirmative Defenses

In accordance with 18 C.F.R. § 385.213(C)(2)(ii), the NYISO's affirmative defenses are set forth in this Answer.

VII. COMMUNICATIONS

All correspondence and other communications regarding this proceeding should be directed to the persons listed below.

[85] 18 C.F.R. § 385.206(b)(6).

[86] *See, e.g.*, Complaint at 11, 34, 35, 36.

[87] *See, e.g.*, Order No. 1920 at 1648.

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VIII. CONCLUSION

For the reasons set forth above, the NYISO respectfully asks that the Commission deny the Complaint with respect to the NYISO because: (i) it raises issues that are properly addressed via a rulemaking or some other form of national policymaking docket; (ii) Complainants have not satisfied their burden of proof to demonstrate that the NYISO's existing planning arrangements are unjust and unreasonable; (iii) Complainants have not satisfied their burden of proof to justify the ITP proposal; and (iv) Complainants seek relief that the Commission may not have the authority to grant.

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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 20th day of March 2025.

/s/ Elizabeth Rilling

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