

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

<b>New York Independent System Operator, Inc.</b>	) ) )	<b>Docket No. ER13-102-005</b>
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**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer in response to certain requests for rehearing and clarification regarding the Commission’s determinations in its July 17, 2014, *Order on Rehearing and Compliance* in the above-captioned proceeding (“July 2014 Order”).<sup>2</sup> To the extent described below, the Commission should deny the request for rehearing and clarification submitted by LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, “LS Power”).<sup>3</sup> In addition, with respect to the conditional request for rehearing by the Long Island Power Authority and Long Island Lighting Company d/b/a LIPA (collectively, “LIPA”),<sup>4</sup> the NYISO informs the Commission of the status of its discussions with LIPA concerning LIPA’s proposed tariff amendments.

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<sup>1</sup> 18 C.F.R. §§ 385.212, 213.

<sup>2</sup> *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (July 17, 2014) (“July 2014 Order”).

<sup>3</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Request for Clarification and Rehearing of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket No. ER13-102-005 (August 18, 2014) (“LS Power Request”).

<sup>4</sup> *New York Independent System Operator, Inc.*, Conditional Request for Rehearing of the Long Island Power Authority and LIPA, Docket No. ER13-102-005 (August 18, 2014) (“LIPA Request”).

## **I. REQUEST FOR LEAVE TO ANSWER**

The NYISO recognizes that the Commission generally discourages answers to requests for rehearing.<sup>5</sup> The Commission, however, has the discretion to accept answers to rehearing requests and has done so when those answers help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record or assist in its decision making process.<sup>6</sup> The NYISO's answer satisfies these standards and should be accepted because it addresses inaccurate or incomplete statements and provides additional information that the Commission needs to fully evaluate the arguments in this proceeding.

## **II. BACKGROUND**

On October 11, 2012, the NYISO and the NYTOs<sup>7</sup> (collectively, the "Filing Parties") submitted a compliance filing proposing to revise the tariff requirements for the NYISO's Comprehensive System Planning Process ("CSPP") in response to the Order No. 1000<sup>8</sup> regional transmission planning and cost allocation requirements ("October 2012 Filing").<sup>9</sup> On April 18, 2013, the Commission issued an order accepting the Filing Parties' proposed tariff revisions in

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<sup>5</sup> See 18 C.F.R. § 385.213(a)(2).

<sup>6</sup> See, e.g., *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision making process."); *FPL Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process").

<sup>7</sup> The NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc.

<sup>8</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order No. 1000"), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *order on reh'g and clarification*, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B"). For convenience, unless otherwise specified, references in this filing to "Order No. 1000" should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B.

<sup>9</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012) ("October 2012 Filing").

part, and directing the Filing Parties to make additional tariff revisions in a further compliance filing (“April 2013 Order”).<sup>10</sup>

On October 15, 2013, in response to the April 2013 Order, the Filing Parties submitted a further compliance filing (“October 2013 Filing”).<sup>11</sup> The October 2013 Filing included significant revisions to the CSPP, including revised tariff requirements to establish the NYISO’s process for evaluating and selecting the more efficient or cost-effective transmission solution to an identified Reliability Need or Public Policy Transmission Need.<sup>12</sup> The July 2014 Order largely accepted the Filing Parties’ proposed tariff revisions and directed the Filing Parties to make certain additional tariff revisions through a further compliance filing due on September 15, 2014.

### **III. ANSWER**

#### **A. The NYISO’s Selection Metrics and Process for Evaluating these Metrics Are Consistent with Order No. 1000 and the Commission’s Determinations for Other ISO/RTOs’ Planning Processes**

LS Power seeks rehearing of the Commission’s acceptance of the detailed metrics that the NYISO will use to evaluate and identify the more efficient or cost-effective transmission solution to an identified Reliability Need or Public Policy Transmission Need. LS Power reiterates its prior position, rejected by the Commission in the July 2014 Order<sup>13</sup> and elsewhere

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<sup>10</sup> *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013) (“April 2013 Order”).

<sup>11</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-002 (October 15, 2013) (“October 2013 Filing”).

<sup>12</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”), and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

<sup>13</sup> July 2014 Order at PP 249-252.

in the country,<sup>14</sup> that the NYISO be required to adopt a particular weighting and scoring system for applying these metrics and to establish cost as the primary factor of its analysis.<sup>15</sup>

The Commission should deny LS Power’s request because Order No. 1000 provided each public utility transmission provider with flexibility to establish its own approach for selecting the more efficient or cost-effective transmission solution and did not require the use of specific criteria or a particular ranking or weighting system.<sup>16</sup> Indeed, Order No. 1000 requires no particular standards other than to require that the criteria be transparent and not unduly discriminatory.”<sup>17</sup> In addition, Order No. 1000 did not require that cost be the primary metric for the public utility transmission provider’s selection of the more efficient or cost-effective transmission solution. Order No. 1000-A simply stated “that *when* cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or non-incumbent transmission developer.”<sup>18</sup> The NYISO’s selection process satisfies these requirements as it will apply all of the selection metrics, including several related to costs, in the same, transparent manner for transmission projects proposed by incumbent and non-incumbent transmission developers alike.

LS Power erroneously argues that all elements of a transmission project’s efficiency should be monetized into a cost metric. The NYISO’s consideration of which project provides

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<sup>14</sup>See, e.g., *PJM Interconnection, L.L.C., et al.*, Order on Rehearing and Compliance, 147 FERC ¶ 61,128 (May 15, 2014) at PP 230-231; *California Independent System Operator Corp., et al.*, Order on Clarification and Compliance, 146 FERC ¶ 61,198 (March 20, 2014) at P 134.

<sup>15</sup> LS Power Request at pp 3-9.

<sup>16</sup> Order No. 1000 at P 223; Order No. 1000-A at P 455.

<sup>17</sup> Order No. 1000-A at P 455.

<sup>18</sup> Order No. 1000-A at P 455 (emphasis added).

the best long-term transmission system expandability, operability and performance are matters of transmission system engineering judgment, and such considerations go well beyond net present value cost accountancy. Contrary to LS Power's arguments that the NYISO's decision will not have a rationale related to just and reasonable transmission service rates, the NYISO will provide detailed written explanations describing why specific projects were and were not chosen to meet current and future transmission needs taking into account all of its stated criteria, including project cost.

**B. Providing for Parallel Cost Recovery for a Regulated Backstop Solution Pending the Realization of a Selected Alternative Regulated Solution is Prudent and Necessary to Ensure Reliability in New York**

The Commission should reject LS Power's request for rehearing regarding a Responsible Transmission Owner's eligibility to recover its costs for the development of a regulated backstop solution under the NYISO's Open Access Transmission Tariff ("OATT") until it is clear that a selected alternative regulated transmission solution will proceed to be constructed and satisfy a Reliability Need.<sup>19</sup> The NYISO is responsible for ensuring that Reliability Needs on the New York Bulk Power Transmission Facilities are addressed. In the absence of sufficient market-based solutions to meet a reliability need, it is essential that the NYISO have the ability to ensure that a regulated solution is available to satisfy a Reliability Need by the need date. LS Power simply ignores the fact that non-incumbent developers have no obligation to provide service and are free to discontinue their proposed projects at any time. Given the absence of an obligation by non-incumbent developers to construct transmission and provide transmission service, the NYISO requires the ability to call upon the Responsible Transmission Owner designated by the NYISO to trigger and continue to develop its regulated backstop solution and be compensated

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<sup>19</sup> LS Power Request at pp 9-14.

for this additional development until such time that the NYISO has sufficient confidence that a selected alternative regulated transmission solution will proceed to construction and satisfy the Reliability Need.

The NYTOs have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by the NYISO as the Responsible Transmission Owner.<sup>20</sup> This obligation was memorialized by the NYTOs in a contract with the NYISO, which was accepted by the Commission.<sup>21</sup> Order No. 1000 did not interfere with such arrangements.<sup>22</sup> Without the ability to trigger a regulated backstop solution to proceed in parallel with a selected alternative regulated transmission solution, New York could be left without any assurance that the bulk power system reliability will be maintained in the nation's largest city and the center of the world's financial markets.

LS Power argues that such concerns should be addressed through a reevaluation process.<sup>23</sup> However, given the length of time required to develop and construct a transmission project, it is unlikely that the NYISO would be able to solicit, evaluate, and select an alternative project that could be implemented prior to the need date if the non-incumbent Developer ceases to move forward with its project. Given that the Commission has indicated that the incumbent utility is not responsible for stepping in and completing a non-incumbent's abandoned project,

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<sup>20</sup> See, e.g., N.Y. Pub. Serv. L. §§ 65, 66 and 72.

<sup>21</sup> See Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (June 10, 2010), *available at*: [http://www.nyiso.com/public/webdocs/markets\\_operations/documents/Legal\\_and\\_Regulatory/Agreements/NYISO/Comprehensive\\_Planning\\_Process\\_for\\_Reliability\\_Needs\\_Agreement.pdf](http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf)

<sup>22</sup> See Order No. 1000-A at P 490 (indicating that “some RTOs and ISOs may have the authority under their tariff or membership agreements to direct a member to build a transmission facility under certain circumstances” and noting that Order No. 1000 “did not address the issue of backstop construction authority or responsibility for any transmission project, whether undertaken initially by an incumbent or a nonincumbent transmission developer.”)

<sup>23</sup> LS Power Request at p 13.

the NYISO would have to turn to short-term Gap Solutions to attempt to address the Reliability Need. Such a Gap Solution would likely be less efficient than a properly planned long-term transmission solution and could be more costly to ratepayers, as they could be required to pay for both the Gap Solution and then a permanent solution. It would also leave the New York bulk power system without a viable long-term transmission solution, which would directly contravene the underlying purpose of Order No. 1000 to bolster the nation's transmission infrastructure.<sup>24</sup>

The NYISO does not intend to provide for the parallel development of both a selected alternative regulated transmission solution and a regulated backstop solution any longer than is required to ensure that the alternative regulated transmission solution will proceed to construct its project and satisfy the identified Reliability Need. The NYISO will halt a regulated backstop solution if sufficient market-based solutions materialize on a timely basis, or if a regulated solution continues to be needed, as soon as the non-incumbent Developer of a selected alternative regulated solution satisfies certain requirements developed to provide the NYISO with sufficient confidence that the non-incumbent Developer will proceed to construct its project and satisfy the Reliability Need.<sup>25</sup> In addition, in accordance with the directives of the July 2014 Order, the NYISO will include in its next compliance filing a description of the circumstances when it will trigger the regulated backstop solution in parallel with a market-based or alternative regulated transmission solution.<sup>26</sup>

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<sup>24</sup> Order No. 1000 at PP 42, 50.

<sup>25</sup> OATT, Attachment Y § 31.2.8.2.3. Specifically, the non-incumbent Developer of a selected and triggered alternative regulated transmission solution must: (i) execute an agreement with the NYISO committing the Developer to seek all necessary approvals required for its proposed project, to develop and construct its proposed projects if proposals are received, and to abide by the related requirements set forth in Attachment Y of the NYISO OATT; (ii) provide construction milestones necessary to develop and construct its proposed project to achieve the required in-service date, and (iii) receive its New York Public Service Law Article VII certification for the project. *Id.*

<sup>26</sup> July 2014 Order at P 75.

**C. Proposed Schedule Regarding Development of *Pro Forma* Development Agreement and Operating Agreement**

LS Power requests that the Commission direct the NYISO to file within sixty days of its order: (i) the *pro forma* development agreement between the NYISO and the Developer of a selected alternative regulated transmission solution (“Development Agreement”), and (ii) the operating agreement between the NYISO and a non-incumbent Developer of a constructed transmission project on terms comparable with the existing agreement between the NYISO and the NYTOs (“Operating Agreement”).<sup>27</sup> For the reasons described below, the Commission should accept the NYISO’s proposed schedule for addressing these two agreements.

The NYISO is in the process of crafting the Development Agreement that it will execute with the Developer of an alternative regulated transmission solution once the project is selected to satisfy a Reliability Need. The NYISO already plans to develop this agreement with its stakeholders as a *pro forma* agreement for inclusion in its OATT and to file this agreement for Commission acceptance pursuant to Section 205 of the Federal Power Act. The NYISO, therefore, does not object to filing this agreement as a compliance obligation in this proceeding.

The NYISO, however, does have concerns with the time frame requested by LS Power. It is unclear whether LS Power intends for the start date of its requested sixty-day period to be the Commission’s issuance of its July 2014 Order (with a resulting due date of September 15, 2014) or its issuance of an order ruling on this request for clarification. Given the uncertainty regarding the requested filing date, the unreasonableness of requiring that such agreement be filed in September 2014 (if that is LS Power’s intent), and the NYISO’s own intentions to proceed with the development of the Development Agreement in a timely manner, LS Power’s request should be denied. Nonetheless, the NYISO does not object to the Commission directing

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<sup>27</sup> LS Power Request at p 2.

it to submit a *pro forma* Development Agreement for inclusion in its tariff in a further compliance filing to be made by the end of 2014.

The NYISO further objects to LS Power's requested directive that it immediately develop an Operating Agreement. It is simply unnecessary for the NYISO to develop and file an Operating Agreement at this time because: (i) the agreement will not have to be executed until a transmission project is nearly in-service, which will not occur for years, (ii) the terms will be comparable to the existing agreement between the NYISO and the NYTOs, such that Developers are already on notice regarding the general terms of the agreement; and (iii) the NYISO has significant other processes, procedures, and agreements, including the Development Agreement, that must be developed in the near term to implement the NYISO's revised Comprehensive System Planning Process in the current planning cycle as directed by the Commission. For this reason, the NYISO is not targeting the development of the Operating Agreement until well into 2015.

**D. The NYISO Is Working with LIPA to Develop Certain Amendments to the NYISO OATT to Address LIPA's Concerns**

LIPA requested rehearing on a conditional basis to protect its legal rights regarding its proposed amendments to the NYISO OATT to address its participation as a non-jurisdictional utility in the NYISO's Public Policy Transmission Planning Process.<sup>28</sup> The NYISO does not take a position regarding the substantive merits of LIPA's arguments in its request for rehearing. The NYISO notes, however, that it is continuing to work with LIPA, the other NYTOs, the New York Department of Public Service, and other interested parties to address remaining open issues concerning LIPA's proposed amendments. If those concerns can be resolved before the Filing Parties submit their compliance filing on September 15, the NYISO does not have any objection

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<sup>28</sup> LIPA Request at p 1.

to filing the proposed tariff amendments as part of the compliance filing for the Commission's consideration.

### **III. CONCLUSION**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant its motion for leave to answer, accept this answer, and deny the requests for rehearing and clarification to the extent described in this answer.

Respectfully submitted,

/s/ Carl F. Patka

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September 2, 2014

cc: Michael Bardee  
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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 2<sup>nd</sup> day of September, 2014.

/s/ Joy A. Zimmerlin

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