

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

New York Independent System Operator, Inc.)))	Docket No. ER17-1310-000
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**REQUEST FOR LEAVE TO ANSWER, ANSWER,
AND MOTION TO INTERVENE OUT-OF-TIME OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s¹ Rules of Practice and Procedure,² the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to the protests of the New York Transco, LLC (“Transco”)³ and the Indicated New York Transmission Owners (“Indicated NYTOs”)⁴ concerning the March 27, 2017, filing of a cost allocation methodology in this proceeding. This Answer solely addresses procedural issues related to this filing. The NYISO does not take a position regarding any substantive aspect of the filing.

The Commission should reject the Transco’s and Indicated NYTOs’ protests to the extent they assert that the NYISO acted beyond the scope of its authority or that the filing should be treated solely for informational purposes. As described below, the methodology was filed in compliance with an express requirement of the NYISO’s Open Access Transmission Tariff

¹ Capitalized terms not defined in this Answer shall have the meaning set forth in Section 31.1.1 of Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”) or in Section 1 of the OATT.

² 18 C.F.R. § 385.213 (2016).

³ *New York Independent System Operator, Inc.*, Motion to Intervene and Protest of New York Transco, LLC, Docket No. ER17-1310-000 (April 17, 2017) (“Transco Protest”).

⁴ *New York Independent System Operator, Inc.*, Motion to Intervene and Protest of the Indicated New York Transmission Owners, Docket No. ER17-1310-000 (April 17, 2017) (“Indicated NYTOs Protest”). The Indicated NYTOs include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

(“OATT”). Specifically, Section 31.5.5.4.1 of the OATT explicitly directs the filing with the Commission of any cost allocation methodology prescribed by a Public Policy Requirement that is identified by the New York Public Service Commission (“NYPSC”) as driving a transmission need for which the NYISO must solicit and evaluate solutions (“Prescribed Methodology”).

II. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.⁵ The NYISO’s Answer satisfies those standards and should be accepted because it addresses inaccurate and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

III. MOTION TO INTERVENE OUT OF TIME

Rule 214(d) of the Commission’s Rules of Practice and Procedure provides that the Commission may grant an untimely motion to intervene for good cause shown.⁶ The NYISO respectfully submits that good cause exists in this case. The NYISO filed the Prescribed Methodology in this proceeding as tariff administrator on behalf of the NYPSC and did not intervene as a party. However, in their protests, the Transco and Indicated NYTOs have directed

⁵ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests “because those answers provided information that assisted [the Commission] in [its] decision-making process”); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission’s decision-making process).

⁶ 18 C.F.R. § 385.214(d) (2016).

certain arguments at the NYISO and its actions and authority in making the filing. For this reason, the NYISO has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. The NYISO's late intervention will not prejudice other parties or otherwise disrupt the proceeding. In addition, the NYISO will accept the record of the proceeding as it stands. Accordingly, the NYISO should be permitted to intervene in this proceeding with all of the rights of a party.

IV. ANSWER

A. The Prescribed Methodology Was Appropriately Filed with the Commission Pursuant to an Explicit Tariff Requirement in the NYISO's OATT

The Commission should reject the Transco's and Indicated NYTOs' assertions that the filing was not properly made. The Prescribed Methodology was filed with the Commission in compliance with an explicit requirement in the NYISO's OATT.

Section 31.5.5.4 of the OATT establishes that the "ISO shall apply the cost methodology accepted by the Commission" to allocate the costs of a transmission project that it has selected in its Public Policy Transmission Planning Process. It then sets forth a multi-step process by which alternative cost allocation methodologies may be filed with the Commission for its acceptance.

First, "[i]f the Public Policy Requirement that results in a Public Policy Transmission Need prescribes the use of a particular cost allocation methodology, then the ISO shall file that methodology with the Commission within 60 days of the issuance by the NYPSC of its identification of a Public Policy Transmission Need."⁷ If, however, there is not a Prescribed Methodology or the Developer of the selected transmission project prefers an alternative methodology, the Developer may file an alternative methodology with the Commission

⁷ OATT Section 31.5.5.4.1.

following coordination with the NYPSC.⁸ Finally, if the Commission does not accept an alternative methodology, the NYISO will allocate the costs to all Load Serving Entities in New York using a default load ratio share methodology.⁹

In this instance, the NYPSC identified a Public Policy Requirement that resulted in its identification of the AC Transmission Public Policy Transmission Needs, for which the NYISO must solicit and evaluate solutions.¹⁰ The NYPSC's Public Policy Requirement prescribed the use of a particular methodology for the allocation of the costs of any transmission project selected by the NYISO to address the resulting needs.¹¹ This Prescribed Methodology was then filed with the Commission in compliance with the explicit requirement in Section 31.5.5.4.1 to facilitate the Commission's review of this methodology and its inclusion in the OATT.¹²

If, however, the Commission concludes that as a procedural matter the NYISO should have instead submitted the Prescribed Methodology on its own behalf as a Section 205 filing, the NYISO respectfully requests that the Commission either deem the March 27, 2017 filing that it administratively submitted to be pursuant to its Section 205 rights or, alternatively, direct the NYISO to re-file the methodology on its own behalf. In either case, the Commission should

⁸ OATT Section 31.5.5.4.2.

⁹ OATT Section 31.5.5.4.3.

¹⁰ NYPSC Case 12-T-0502, *et al.*, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015) (identifying AC Transmission Public Policy Transmission Needs driven by Public Policy Requirement) ("December 2015 Order"). A Public Policy Requirement is defined in Section 31.1 of Attachment Y of the NYISO OATT to include "a NYPSC order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act....."

¹¹ December 2015 Order at Appendix D (prescribing a cost allocation methodology and requesting NYISO to design more granular cost allocation among downstate entities to determine the respective shares of upstate and downstate entities); NYPSC Case 12-T-0502, *et al.*, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades at pp 19-22 (issued January 24, 2017) (adopting NYISO analysis performed in response to December 2015 Order as part of the prescribed cost allocation methodology).

¹² The NYISO submitted - in its role as tariff administrator - the Prescribed Methodology for the NYPSC.

reject the Transco's and Indicated NYTOs' erroneous assertion that the NYISO does not have the authority to make a filing because it did not first obtain stakeholder and Board approval through its stakeholder governance process.

Section 31.5.5.4.1 of the OATT expressly calls for the Prescribed Methodology to be filed. The Commission accepts on a regular basis NYISO filings submitted pursuant to Section 205 that it files to comply with explicit requirements in the NYISO's tariffs without a stakeholder vote. For example, the NYISO files revisions to its ICAP Demand Curves on a recurring basis with the Commission pursuant to Section 205 in accordance with an explicit directive in its tariff to make this filing, which revisions are not subject to a stakeholder vote.¹³ In addition, the NYISO routinely files agreements with the Commission pursuant to Section 205 in accordance with the explicit directives in its tariff to make these filings, which revised agreements are not subject to stakeholder vote.¹⁴

B. The Commission Should Act on the Merits of the Prescribed Methodology

The Commission should also reject the Transco's and Indicated NYTOs' assertion that it should treat the filing of the Prescribed Methodology as made solely for informational purposes.

As described above, Section 31.5.5.4 requires the NYISO to apply the cost allocation methodology accepted by the Commission and establishes the multi-step process by which alternative methodologies are to be filed with and accepted by the Commission. The

¹³ See NYISO Market Administration and Control Area Services Tariff ("Services Tariff") §§ 5.14.1.2.1.11 and 5.14.1.2.2.4.11 (requiring Board approval, but not stakeholder approval, prior to filing); *see also* Services Tariff § 5.16.4 (establishing filing requirements for proposing tariff provisions to establish a New Capacity Zone, without specifying Board or stakeholder approval).

¹⁴ See OATT § 30.11.3 (requiring the NYISO and Connecting Transmission Owner to file with the Commission an interconnection agreement that includes non-conforming changes from the *pro forma* agreement); *see also* OATT § 31.2.8.1.6 (requiring the NYISO to file a Development Agreement that includes non-conforming changes from the *pro forma* agreement with the Commission).

Commission has clearly stated that it would consider the merits of any filed alternative methodology. Specifically, the Commission stated:

Further, we note that NYISO will file any such proposed cost allocation mechanisms with the Commission for approval. This additional requirement that NYISO file each proposed cost allocation method with the Commission for approval ensures that the Commission will review each proposed cost allocation method to determine whether it is just and reasonable and not unduly discriminatory or preferential.¹⁵

By contrast, the Indicated NYTOs assert that the Prescribed Methodology is not being filed for the Commission's acceptance, but rather solely "to inform the Commission of the cost allocation specified in the Public Policy Requirement when the selected developer files the cost allocation proposal with the Commission pursuant to its rights under Section 205."¹⁶ The Commission should reject this assertion, which would convert any Prescribed Methodology into merely an informational placeholder in anticipation of a potential later filing by a Developer.¹⁷ The Transco's and Indicated NYTOs' position is not supported by either the multi-step cost allocation process set forth in Section 31.5.5.4 or the description of this process in the filing letters that the NYISO jointly filed with the New York Transmission Owners.¹⁸

¹⁵ *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 (2013) at P 325. The filing requirements were subsequently amended, so that the Developer is responsible for filing its proposed cost allocation methodology, but the NYISO remains responsible for filing any Prescribed Methodology. See OATT Sections 31.5.5.4.1, 31.5.5.4.2.2, 31.5.5.4.2.4, 31.5.5.4.2.5.

¹⁶ Indicated NYTOs Protest at p 5.

¹⁷ The Commission's acceptance of a Prescribed Methodology does not in any way foreclose a Developer's ability under Section 31.5.5.4 to subsequently file a different alternative methodology for the Commission's acceptance.

¹⁸ For example, the joint September 2014 compliance filing clearly provides for Commission action on a Prescribed Methodology. The filing letter indicates that the time frame of the multi-step process could run from 60 to 330 days. *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-006 at p 16 (September 15, 2014). That is, the multi-step process could be over in as soon as 60 days if there were a Prescribed Methodology, which the NYISO is required to file within 60 days, and the Developer of the selected project does not thereafter file its own alternative cost allocation methodology.

This assertion also fails to take into account that the Prescribed Methodology may be the only alternative methodology filed with the Commission.¹⁹ If the NYISO were to file the Prescribed Methodology solely for informational purposes and the Developer of the selected project elected not to propose its own alternative methodology, then the NYISO would be required to apply the default load ratio share methodology in the absence of an alternative accepted by the Commission, notwithstanding the existence of the Prescribed Methodology. This outcome would be inconsistent with the language and purpose of Section 31.5.5.4.

¹⁹ The Developer of a selected project is under no tariff obligation to propose its own alternative methodology.

V. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its motion to intervene out-of-time, and accept this Answer and the positions set forth herein.

Respectfully submitted,

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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 2nd day of May 2017.

/s/ Joy A. Zimmerlin

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