

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

**New York Independent System Operator, Inc.        )        Docket Nos. ER19-528-000**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S  
ANSWER TO COMMENTS**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits this answer in response to the comments submitted by New York Transco LLC (“Transco”)<sup>2</sup> in the above-captioned proceeding.

The NYISO submitted Section 205 tariff revisions on December 11, 2018 (“December 2018 Filing”) to clarify, streamline, and enhance its Public Policy Transmission Planning Process (“Public Policy Process”).<sup>3</sup> While generally supporting the proposed tariff revisions, Transco requests that the Commission direct certain modifications to the NYISO’s proposed revisions to its Open Access Transmission Tariff (“OATT”). In particular, Transco requests modifications to the description in the OATT of the technical conference process step through which the NYISO

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<sup>1</sup> The NYISO may answer pleadings that are styled as “comments,” such as Transco’s pleadings, as a matter of right. *See* 18 C.F.R. § 385.213(a)(3). To the extent that the Commission considers the pleadings filed by PSC and Transco to be protests, the NYISO respectfully requests leave to answer the protests. The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help clarify complex issues, provided additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process. *See* §385.213(a)(2); *see, e.g., S. Cal. 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 Ind. Sys. Op., 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); *PJM Interconnection, LLC*, 132 FERC ¶ 61,207 at P 44 (2010) (accepting answers to answers and protests because they assisted in the Commission’s decision-making process).

<sup>2</sup> Motion to Intervene and Comments of New York Transco LLC, Docket No. ER19-528-000 (January 2, 2019) (“Transco Comments”).

<sup>3</sup> *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Public Policy Transmission Planning Process, Docket No. ER19-528-000 (December 11, 2018).

will provide input concerning the scope of selection metrics prior to soliciting project proposals. The Commission should reject the requested modifications for the reasons stated herein.

## **I. ANSWER**

The Commission should reject Transco's requested modification to the NYISO's proposed technical conference requirements in Section 31.4.4.3.1 of the OATT and accept the NYISO's December 18 Filing as just and reasonable. Transco's requested modification inappropriately sidesteps the NYISO's stakeholder governance process, is unnecessary, and is not a minor modification to the NYISO's December 18 Filing for which the Commission has the authority to direct a change.

The NYISO brought its proposed tariff language for Section 31.4.4.3.1 concerning a technical conference to multiple stakeholder meetings, including the joint meetings of the Electric System Planning Working Group and Transmission Planning Advisory Subcommittee on September 25, 2018 and October 1, 2018, the Business Issues Committee meeting on October 10, 2018, and the Management Committee meeting on October 31, 2018. Transco was an active participant in this process. The NYISO received and considered input concerning its proposed tariff revisions, including input from Transco, and made certain modifications to address stakeholder input. In particular, to accommodate input provided by Transco and other stakeholders, the NYISO agreed to insert the technical conference requirements in Section 31.4.4.3.1 and to make certain revisions to the related tariff language. Stakeholders then voted to approve the proposed tariff language at both the Business Issues Committee and Management Committee meetings.

Moreover, Transco's requested modification is unnecessary because it duplicates requirements already included in the NYISO's proposed Section 31.4.4.3.1. In the December

2018 Filing, the NYISO proposed to insert a process step in Section 31.4.4.3.1 to hold a technical conference with Developers and interested parties prior to issuing a solicitation for solutions to a Public Policy Transmission Need. As described in the filing letter, this step will provide additional clarity at the start of the process concerning the scope of the metrics that the NYISO will use in evaluating proposed solutions. Specifically, Section 31.4.4.3.1 provides that “the ISO shall hold a technical conference with Developers and interested parties to obtain their input on the ISO’s application of the selection metrics set forth in Section 31.4.8.1 for purposes of soliciting solutions to the Public Policy Transmission Need.” Section 31.4.8.1 of the NYISO OATT already contains all of the categories of metrics that the NYISO uses in evaluating and selecting among proposed transmission solutions in its Public Policy Process.<sup>4</sup>

Transco proposes to modify Section 31.4.4.3.1 to highlight just two of the categories of selection metrics already addressed in Section 31.4.8.1. Specifically, Transco proposes to modify Section 31.4.4.3.1 as follows: “. . . the ISO shall hold a technical conference with Developers and interested parties to obtain their input on the ISO’s application of the selection metrics set forth in Section 31.4.8.1, any metrics identified by the NYPSC in its order identifying the need, and any additional metrics that the ISO may apply to the need for purposes of soliciting solutions to the Public Policy Transmission Need.”<sup>5</sup> As acknowledged by Transco,<sup>6</sup> the selection metrics it proposes to highlight with its proposed modification are already captured by

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<sup>4</sup> These metrics include: capital costs; the cost per MW ratio; the expandability, operability, and performance of the proposed project; the developer’s possession or ability to obtain the required property rights for the project; potential issues associated with project delay; any criteria specified by the Public Policy Requirement or provided by the New York State Public Service Commission (“PSC”) to the extent compliance with such criteria and analyses are feasible; and any other appropriate metrics identified by the NYISO, in consultation with stakeholders, in the context of the Public Policy Requirement.

<sup>5</sup> Transco Comments at p 6.

<sup>6</sup> Transco Comments at p 5.

the reference to Section 31.4.8.1.<sup>7</sup> Accordingly, to the extent that Transco seeks to ensure that the technical conference will cover all categories of metrics, its proposed revisions are unnecessary.

Nevertheless, Transco further states that it

is concerned that without a clear enunciation in Section 31.4.4.3.1, the NYISO can determine during the selection phase that the NYPSC identified metric should be accounted for **in a different manner** or that an additional metric is necessary to make its selection without providing Developers an opportunity to evaluate and address that metric (**or how a metric will be analyzed**) in its initial submission.<sup>8</sup>

The NYISO does not agree that it is appropriate, necessary, or intended in the filing that the NYISO must define at the time of the solicitation of projects the precise manner in which it will account for or address a PSC identified metric or any other metric in making a project selection. Contrary to Transco's viewpoint, the NYISO must retain reasonable latitude in its application of the metrics. The precise nature of the assessment will turn on the facts and issues raised by the specific projects submitted to the NYISO. Given that it seeks to modify the purpose and intent of the technical conference proposed in the tariff section, Transco's requested modification would require an "entirely different rate regime" and is not simply a minor modification for which the Commission has the authority to direct a change in response to a Section 205 filing.<sup>9</sup>

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<sup>7</sup> OATT Section 31.4.8.1.8 establishes as a selection metric any criteria specified by the Public Policy Requirement or provided by the PSC to the extent compliance with such criteria and analyses are feasible; and OATT Section 31.4.8.1.9 establishes as a selection metric or metrics any other appropriate metrics identified by the NYISO, in consultation with stakeholders, in the context of the Public Policy Requirement.

<sup>8</sup> Transco Comments at 5 (emphasis added).

<sup>9</sup> See *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017).

Accordingly, the Commission should reject the requested language change and accept the NYISO's tariff filing as just and reasonable without modification.<sup>10</sup>

## II. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission reject Transco's requested modifications and accept the NYISO's proposed revisions to the Public Policy Process in the above referenced docket as just and reasonable.

Respectfully submitted,

/s/ Carl F. Patka

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January 17, 2019

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<sup>10</sup> In its intervention, the PSC requests that the OATT expressly provide that the NYISO will not select a project within 120 days of its submission to the PSC of the Viability and Sufficiency Assessment of proposed solutions to provide time for the PSC to issue an order that may cancel or modify a transmission need. Notice of Intervention and Comments of the New York State Public Service Commission, Docket No. ER19-528-000 (January 2, 2019), at 6. While the 120-day proposal was not discussed during the stakeholder process, such a requirement is unlikely to have any practical effect given the time required to complete the evaluation and selection process.

## **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 17<sup>th</sup> day of January 2019.

/s/ Joy A. Zimmerlin

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