

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

New York Independent System Operator, Inc.) **Docket Nos. ER15-2059-000
ER15-2059-001**

**REQUEST FOR REHEARING OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Section 313(a) of the Federal Power Act¹ and Rules 713 and 2007² of the Commission’s Rules of Practice and Procedure,³ the New York Independent System Operator, Inc. (“NYISO”) requests rehearing of the Commission’s December 23, 2015, *Order Rejecting Tariff Revisions* in the above-captioned proceeding (“December Order”).⁴

The December Order’s rejection of all of the tariff revisions that the NYISO proposed in this proceeding does not constitute reasoned decision-making. The Commission summarily rejected all of the proposed revisions because it determined that a small portion of them (referred to herein as the “Interconnection Provisions”) unduly discriminated between incumbent and non-incumbent developers by referring to the NYISO’s existing separate processes for interconnection and transmission expansion. That determination is wholly inapplicable to the NYISO’s numerous other proposed tariff clarifications, referred to herein as the “Non-Interconnection Provisions.” These clarifications are entirely unrelated to the Interconnection Provisions, do not refer to the existing tariff provisions that formed the stated basis of the

¹ 16 U.S.C. § 8251(a).

² This filing was originally due on January 22, 2016, the 30th day following the Commission’s December 23, 2015 Order. The filing deadline was automatically extended by operation of Rule 2007(a)(2) because adverse weather conditions in the Washington, D.C. region resulted in the Commission closing early on January 22 and not reopening until today.

³ 18 C.F.R. § 385.713.

⁴ *New York Independent System Operator, Inc.*, Order Rejecting Tariff Revisions, 153 FERC ¶ 61,340 (2015) (“December Order”).

Commission's concern, and do not themselves create any potential for undue discrimination between incumbent and non-incumbent developers. Therefore, the Commission failed to engage in reasoned decision-making when it rejected the extensive Non-Interconnection Provisions spanning numerous tariff sections that were developed through months of stakeholder discussions and that enjoyed consensus stakeholder support. The Commission compounded its error by neglecting to provide any kind of reasoned explanation for its determination.

Accordingly, the Commission should grant rehearing and accept the proposed Non-Interconnection Provisions.⁵

I. COMMUNICATIONS

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⁵ The NYISO is not seeking rehearing with respect to the Interconnection Provisions, which it will address in a further compliance filing on March 22, 2016. *See New York Independent System Operator, Inc.*, 153 FERC ¶ 61,341 (2015) (establishing compliance filing obligation); *Notice of Extension of Time*, Docket No. ER13-102-007 (January 14, 2016) (establishing March 22 filing deadline).

⁶ Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

* -- Persons designated for service.

II. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

In accordance with Rule 713(c),⁷ the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of the December Order:

- The Commission failed to engage in reasoned decision making and acted unlawfully by rejecting the Non-Interconnection Provisions based on wholly inapplicable and irrelevant concerns about undue discrimination, and without providing any reasoned explanation for that rejection.⁸

III. BACKGROUND

On June 29, 2015, the NYISO filed proposed revisions to the Public Policy Transmission Planning Process (“Public Policy Process”) portion of its Comprehensive System Planning Process.⁹ The June 29 Filing¹⁰ included a wide variety of proposed tariff revisions that clarified or revised the existing Public Policy Process tariff requirements. These changes need to be in place for the NYISO to fully implement its Public Policy Process in the current planning cycle. The NYISO developed the proposed revisions through months of stakeholder discussions,

⁷ 18 C.F.R. § 385.713(c).

⁸ See, e.g., *Motor Vehicle Mfr. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 at 43 (1983); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 at 839 (D.C. Cir. 2006); *NorAM Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998); citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005).

⁹ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Attachment Y of the NYISO OATT, and if not defined therein, in the body of the NYISO OATT and the NYISO Market Administration and Control Area Services Tariff.

¹⁰ *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Public Policy Transmission Planning Process, Docket No. ER15-2059-000 (June 29, 2015) (“June 29 Filing”). See also *New York Independent System Operator, Inc.*, Response to Deficiency Letter; Request for a Revised Effective Date; and Resubmission of Proposed Tariff Revisions, Docket No. ER15-2059-000 (October 27, 2015).

stakeholders approved them without objection, and no party opposed them before the Commission.

Specifically, the June 29 Filing included various Non-Interconnection Provisions that addressed a broad range of matters within the Public Policy Process. Issues addressed included cost allocation and recovery, post-selection requirements, the impact of disputes on the Public Policy Process, the scope of the base case used to study proposed solutions to a Public Policy Transmission Need, confidentiality, information submission requirements, the time frame for satisfying Public Policy Transmission Needs, tariff flexibility in addressing minor process delays, and numerous other points.

The December Order rejected the June 29 Filing in its entirety. It did so solely because the Commission was concerned that certain Interconnection Provisions would “subject nonincumbent transmission developers to an interconnection process with different requirements than the interconnection process that applies to incumbent Transmission Owners.”¹¹ The Commission stated that this different interconnection treatment was unduly discriminatory.¹²

The December Order did not address the numerous other proposed Non-Interconnection Provisions referenced above that were unrelated to the Interconnection Provisions. It simply declared that the Commission was rejecting the entire June 29 Filing because the Interconnection Provisions were ostensibly “fundamental” to it.¹³

¹¹ December Order at P 12.

¹² *See id.*

¹³ *See* December Order at n. 19 (“Because we reject this fundamental aspect of NYISO’s filing we also find it appropriate to reject NYISO’s filing in its entirety.”).

IV. REQUEST FOR REHEARING

The Commission failed to engage in reasoned decision-making when it rejected the full set of proposed tariff revisions based on a rationale that could apply to only a subset of those revisions. The Administrative Procedure Act¹⁴ requires federal agencies, including the Commission, to engage in “reasoned decision-making” and provide a reasonable explanation for their decisions. Commission decisions are remanded, or vacated, on appeal if they fail to satisfy this standard. Specifically, courts have held the Commission must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”¹⁵ A determination does not constitute reasoned decision-making if an agency has “offered an explanation for its decision that runs counter to the evidence before the agency.”¹⁶ The Commission must engage arguments raised before it.¹⁷ A decision that does not even address the arguments before it “can hardly be classified as reasoned.”¹⁸

The extent of the December Order’s “explanation” for its rejection of Non-Interconnection Provisions is in a footnote which states that the Interconnection Provisions were so “fundamental” that they somehow invalidated the entire June 29 Filing. The Commission did not engage in reasoned decision-making when it rejected numerous tariff revisions that were developed through months of stakeholder discussions and that enjoyed consensus support, based

¹⁴ 5 U.S.C. §§ 551 *et seq.*

¹⁵ *Motor Vehicle Mfr. Ass 'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citations omitted).

¹⁶ *See National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 at 839 (D.C. Cir. 2006) (remanding decision to Commission).

¹⁷ *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (“[i]t most emphatically remains the duty of this court to ensure that an agency engage the arguments raised before it--that it conduct a process of reasoned decision making” (remanding decision to Commission); *citing KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992) (same).

¹⁸ *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (remanding decision to Commission).

on this wholly unsupported and incorrect assertion. The Non-Interconnection Provisions provide for comparable treatment of incumbent and non-incumbent Developers and raise no concerns regarding undue discrimination. The Interconnection Provisions and the Non-Interconnection Provisions are not linked such that the rejection of the former dictated the rejection of the latter.

The NYISO is developing a new tariff filing to re-submit the Non-Interconnection Provisions without including the Interconnection Provisions.

The NYISO will separately address the Interconnection Provisions in its further compliance filing on March 22, 2016.¹⁹ In short, the Commission should issue an order on rehearing that accepts the proposed Non-Interconnection Provisions.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant rehearing of the December Order.

Respectfully submitted,

/s/ Ted J. Murphy
Ted J. Murphy
Counsel to the NYISO

January 27, 2016

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¹⁹ See *supra* n. 5.

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 27th day of January 2016.

By: /s/ John C. Cutting

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