

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

New York Independent System Operator, Inc.                     )  
   )             Docket No. ER13-102-009  
   )

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s<sup>1</sup> Rules of Practice and Procedure,<sup>2</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to the comments of New York Transco, LLC (“Transco”)<sup>3</sup> and the comments and protest of LSP Transmission Holdings, LLC and LS Power Transmission, LLC (collectively, “LS Power”)<sup>4</sup> concerning the NYISO’s March 22, 2016, supplemental compliance filing in this proceeding (“Compliance Filing”).<sup>5</sup> For the reasons described below, the Commission should reject the comments and protest in their entirety. The Commission should accept the Compliance Filing without modification, and find

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<sup>1</sup> 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”), the Development Agreements filed in the Compliance Filing, or in Section 1 of the OATT.

<sup>2</sup> 18 C.F.R. § 385.213 (2014).

<sup>3</sup> *New York Independent System Operator, Inc.*, Motion to Intervene and Comments of New York Transco, LLC, Docket No. ER13-102-009 (April 12, 2016) (“Transco Comments”).

<sup>4</sup> *New York Independent System Operator, Inc.*, Comments and Protests of LSP Transmission Holdings, LLC and LS Power Transmission, LLC to Compliance Filing, Docket Nos. ER13-102-007, -009 (April 12, 2016) (“LS Power Protest”).

<sup>5</sup> *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016) (“Compliance Filing”).

that the NYISO has complied with the requirements of Order No. 1000<sup>6</sup> and the Commission's December 23, 2015 order in this proceeding ("December Order").<sup>7</sup>

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

The NYISO may answer pleadings that are styled as comments as a matter of right.<sup>8</sup> The Commission also has discretion to accept, and routinely accepts, answers to protests where, they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.<sup>9</sup> The NYISO's Answer to the protest of LS Power 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.

## **II. BACKGROUND**

In response to the Order No. 1000 regional transmission planning and cost allocation directives, the NYISO has submitted compliance filings to revise its tariff requirements for its Comprehensive System Planning Process ("CSPP"), which is composed of the NYISO's

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<sup>6</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>7</sup> *New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015) ("December Order"); The Commission has granted the NYISO a partial extension of 180 days to address certain tariff implementation issues associated with the *pro forma* operating agreement proposed in the March 2016 Compliance Filing. *See New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (March 23, 2016).

<sup>8</sup> *See* 18 C.F.R. § 385.213(a)(3).

<sup>9</sup> *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).

reliability, economic, and public policy planning processes.<sup>10</sup> The Commission has largely accepted the NYISO's revised CSPP as compliant with the Order No. 1000 requirements.<sup>11</sup>

In response to the directives in the December Order, the NYISO submitted in the Compliance Filing the following revisions to its Open Access Transmission Tariff ("OATT"): (i) new Transmission Interconnection Procedures and related tariff revisions to the NYISO's existing interconnection and transmission expansion requirements; (ii) revisions to the existing *pro forma* Development Agreement for the NYISO's reliability planning process and related tariff provisions; (iii) a new *pro forma* Development Agreement for the NYISO's Public Policy Transmission Planning Process and related tariff provisions; and (iv) a new *pro forma* operating agreement for non-incumbent transmission owners and related tariff provisions.

### **III. ANSWER**

#### **A. NYISO's Proposed Transmission Interconnection Procedures Are Just and Reasonable and Comply with the Commission's Directive that Incumbent and Non-Incumbent Developers' Transmission Projects Be Subject to the Same Interconnection Procedures.**

In its December Order, the Commission directed that both incumbent and non-incumbent Developers' transmission projects competing in an Order No. 1000 transmission planning process be subject to the same interconnection process.<sup>12</sup> The NYISO, in concert with stakeholders, proposed the Transmission Interconnection Procedures ("TIP")—a hybrid

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<sup>10</sup> See *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-007 (May 18, 2015); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-002 (October 15, 2013); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012).

<sup>11</sup> See December Order; *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015); *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014); *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013).

<sup>12</sup> December Order at P 67.

interconnection process melding the existing Large Facility Interconnection Procedures<sup>13</sup> with the existing transmission expansion procedures. As proposed, the TIP will provide a number of benefits with regard to the evaluation of transmission projects in the interconnection process and represents a just and reasonable process that subjects incumbent and non-incumbent Developers' transmission projects to the same interconnection procedures.

**1. LS Power's Protest of the NYISO's Comprehensive System Planning Process Seeks Revisions Neither Directed by Order No. 1000 Requirements Nor the Commission's Directives in this Proceeding.**

LS Power's protest is largely a recommendation to the Commission for the NYISO to revise its CSPP so that the NYISO identifies potential system upgrades as part of its competitive evaluation rather than through its TIP.<sup>14</sup> While LS Power purports to raise concerns regarding the alignment of the TIP with the NYISO's overall Order No. 1000 compliant planning process, in fact, it essentially requests that competitively solicited projects be exempt from *any* interconnection procedures and that, instead, the NYISO identify potential system upgrades within its competitive evaluation process.<sup>15</sup>

Nothing under Order No. 890<sup>16</sup> or Order No. 1000 suggests that an Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") is required to incorporate interconnection processes into its competitive evaluation of transmission alternatives. Therefore, LS Power's proposal represents a significant departure from the NYISO's CSPP largely accepted

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<sup>13</sup> Compare OATT Attachments S and X.

<sup>14</sup> LS Power Protest at pp 2-5.

<sup>15</sup> The Commission could potentially view LS Power's Protest as a collateral attack on its previous Orders approving the CSPP, as the NYISO's interconnection process has always been a separate and distinct process from the CSPP. *See, e.g., California Independent System Operator Corp.*, 119 FERC ¶ 61,240 at P 13 (2007) ("[T]hese protests should have been raised on rehearing and/or clarification of the January 22 Order, and therefore we reject [them] . . . as untimely and a collateral attack"); *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,053 at P 75 (2006) (rejecting comments as they were "a collateral attack on the *SPP Market Order*").

<sup>16</sup> *See Preventing Undue Discrimination and Preference in Transmission Service*, Order 890, FERC Stats. & Regs. ¶ 31,421 (2007) ("Order No. 890").

by the Commission to date.<sup>17</sup> Although other RTOs and ISOs, like PJM, chose to combine their interconnection and Order No. 1000 planning processes, the Commission has allowed regional variations that meet the principles of Order No. 1000 and has not required a one-size-fits-all approach.<sup>18</sup> To do what LS Power suggests, the NYISO would have to completely overhaul its Order No. 1000 transmission planning process and the proposed TIP.

Furthermore, the Commission should reject LS Power's protest because the Commission's directive in the December Order did not direct the NYISO to revise its CSPP to integrate upgrades related to the new interconnection process into the competitive evaluation of proposed solutions. The Commission directed the NYISO to make tariff revisions so that both incumbent and non-incumbent transmission developers competing in the NYISO's Order No. 1000 transmission planning process are subject to the same interconnection process.<sup>19</sup> Therefore, the scope of this compliance proceeding is properly limited to whether the NYISO has satisfied that directive.<sup>20</sup> With respect to that inquiry, LS Power supports the NYISO's proposed procedures "to the extent that they treat incumbent and nonincumbent developers similarly."<sup>21</sup> None of the concerns raised by LS Power appear to be related to comparability of

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<sup>17</sup> See footnote 11, *supra*.

<sup>18</sup> See Order No. 1000, 136 FERC ¶ 61,051 at PP 155, 157-58.

<sup>19</sup> See December Order; *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015).

<sup>20</sup> See *California Independent System Operator Corporation*, 154 FERC ¶ 61,122 at P 15 (2016). In any event, the Commission should reject LS Power's protest because it failed to raise any objections in the NYISO's stakeholder process leading up to the Compliance Filing seeking to modify the CSPP to require the NYISO to identify necessary upgrades of proposed projects in the TIP as part of its competitive evaluation of transmission projects. See *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,209 at PP 24, 26 (2008) (declining to direct requested revisions without "giving other stakeholders an opportunity for comment" because "it would inappropriately circumvent [the] stakeholder process."); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process).

<sup>21</sup> LS Power Protest at p 2.

treatment of incumbent and nonincumbent developers in the TIP. All of its objections are, therefore, outside the scope of this compliance proceeding.

**2. The Proposed TIP Represents a Balanced Approach to the Commission's Directive that Complements the Comprehensive System Planning Process.**

LS Power primarily argues that the TIP proposes to subject proposed solutions to interconnection requirements separate and apart from the CSPP. The Commission should reject LS Power's arguments because the proposed TIP treats all proposed transmission projects equally and complements the CSPP.<sup>22</sup>

The TIP streamlines the evaluation of the interconnection of transmission projects into one process for all transmission projects. Under the NYISO's existing interconnection processes, non-incumbent Developers' transmission projects are evaluated under a formalized, three-party process set forth in the Large Facility Interconnection Procedures with stakeholder visibility.<sup>23</sup> Incumbent Developers' transmission projects, by contrast, are evaluated under a largely one- or two-party process set forth in Sections 3.7 and 4.5 of the OATT. The proposed TIP provides one interconnection process for nearly all transmission projects,<sup>24</sup> eliminating any distinction between the entity proposing the transmission project or the cost recovery mechanism a project may ultimately seek. The result is that both incumbent and non-incumbent Transmission Owners have their proposed interconnections evaluated on a level playing field. Furthermore, as discussed herein, the proposed TIP provides a process through which proposed transmission projects can be evaluated in parallel with the NYISO's Order No. 1000 competitive planning process.

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<sup>22</sup> As stated above, to accomplish what LS Power suggests would require an entire overhaul of the NYISO's Order No. 1000 competitive planning process that not only has been largely accepted by the Commission but also is underway.

<sup>23</sup> See Attachment X of the OATT.

<sup>24</sup> The only transmission projects not subject to the TIP are local Transmission Owner projects or controllable transmission projects that seek Capacity Resource Interconnection Service (CRIS) rights.

As LS Power acknowledged in its Protest, the proposed TIP “generally strike[s] a reasoned balance between the existing incumbent transmission owner process and the OATT Attachment S and X processes to which NYISO had proposed to subject non-incumbent developers.”<sup>25</sup> The December Order specifically suggested that the NYISO may choose to evaluate all of the Order No. 1000 transmission projects under the existing interconnection process in Attachments S and X of the OATT.<sup>26</sup> Like the proposed TIP, the NYISO’s existing interconnection process under OATT Attachments X and S identify required upgrade facilities outside of and separately from the Comprehensive System Planning Process (CSPP)—*i.e.*, the challenges LS Power raised regarding the TIP are challenges to the very directive that the Commission included in its December Order.

While the Commission’s December Order provided the NYISO with the flexibility to propose an alternative process other than the existing interconnection process in OATT Attachments X and S, it did not offer the NYISO the option to eliminate interconnection requirements in their entirety for proposed projects responding to solicitations under the CSPP. Nor did it require or even contemplate conflating the interconnection and CSPP evaluations.<sup>27</sup>

### **3. The Evaluation of Transmission Projects under the TIP and the CSPP Are Necessarily Distinct.**

LS Power expresses concerns over the potential misalignment or overlap between the NYISO’s evaluation for purposes of the selection of proposed transmission solutions under CSPP and the evaluation of system impacts in the TIP. However, the TIP and CSPP are, in fact, distinct and necessarily so due to their specific aims.

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<sup>25</sup> LS Power Protest at p 2.

<sup>26</sup> December Order at P 67.

<sup>27</sup> *Id.* at P 68.

The interconnection process is intended to ensure that a project being proposed, including under the CSPP, can connect to the system without adversely impacting system reliability. This evaluation looks at all of the detailed mechanics specific to the proposed connection to the existing system and determines, for example, how the local system will accommodate the project (*e.g.*, through a new substation connection or tap into an existing line). These evaluations are quite different than those involved in the CSPP, which are focused on the evaluation of the proposed project to determine whether it would satisfy the identified need and then select the project that is the more efficient or cost effective solution.

Due to their distinct goals, there are inherent differences in the base case assumptions of the valuation of the system impacts in the interconnection process versus the CSPP. The thermal, voltage, short circuit, and stability analyses required in the TIP are and should be different than the evaluations that are required in the CSPP to determine how projects meet reliability, economic, or public policy needs. As a result, the TIP uses a base case consistent with other interconnection base cases. Even LS Power acknowledges that this “is a reasonable set of assumptions for that purpose.”<sup>28</sup> With respect to LS Power’s concern that “different studies having different results that do not align,”<sup>29</sup> the NYISO has proposed tariff language to allow adjustments to interconnection impact study base case assumptions as needed.<sup>30</sup>

While the TIP and CSPP are distinct by design, they complement each other to the benefit of the NYISO’s planning process as a whole. As LS Power correctly recognizes, a Developer proposing a project for an identified need must submit a valid Transmission

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<sup>28</sup> LS Power Protest p at 3.

<sup>29</sup> *Id.* at pp 3-5.

<sup>30</sup> OATT Section 22.6.1 specifically allows the NYISO to alter the base case as appropriate “if the proposed Transmission Project is related to or in response to a system condition not reflected in the [base case inclusion rules].”



Interconnection Application or Interconnection Request, as applicable.<sup>31</sup> Later in the solicitation process, a Developer wishing for its project to be evaluated for selection as the “more efficient or cost effective project” must have an executed System Impact Study Agreement or System Reliability Impact Study Agreement, as applicable, for its project.<sup>32</sup>

LS Power’s contention that the timing for both of these milestones is outside a Developer’s control is incorrect for several reasons. First, the submission of a valid Transmission Interconnection Application or Interconnection Request is entirely within a Developer’s control. In fact, a Developer may submit such a request or application well before the NYISO issues any formal solicitation under its CSPP.<sup>33</sup> Once submitted, the NYISO is required to identify any deficiencies in an Interconnection Request or TIP Application within five (5) Business Days.<sup>34</sup> Second, execution of a System Impact Study Agreement or System Reliability Impact Study Agreement is almost entirely within a Developer’s control. The NYISO’s only involvement is tendering such a study agreement for execution, and LS Power surely does not suggest that the NYISO would unnecessarily withhold tendering such an agreement to a Developer.

Furthermore, LS Power appropriately recognizes that evaluation of the more efficient or cost effective solution, by necessity, requires the NYISO to account for the system impacts of the proposed solutions.<sup>35</sup> This is precisely what NYISO proposes to do by acknowledging that it

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<sup>31</sup> Proposed revisions to OATT Sections 31.2.5.1, 31.4.4.31.

<sup>32</sup> Proposed revisions to OATT Sections 31.2.6.1, 31.4.6.6.

<sup>33</sup> It should be evident well in advance of the NYISO’s solicitation process that a potential Public Policy Transmission Need or Reliability Need will be announced, thereby allowing a developer the flexibility to proceed with interconnection evaluations of potential projects in advance of the competitive planning process.

<sup>34</sup> OATT Section 30.3.3.3; proposed revisions to OATT Section 22.4.2.2.

<sup>35</sup> LS Power Protest at 4. Indeed, the NYISO conducts a system impact study of proposed regulated transmission solutions under its Reliability Planning Process, giving due consideration to the results of any completed SIS or SRIS, and then affords a Developer the ability to adjust its submission to address the impact and “remain eligible for selection.” Proposed revisions to OATT Section 31.2.6.3.

“shall give due consideration to the results of any completed System Impact Study [(“SIS”)] or System Reliability Impact Study [(“SRIS”)], as applicable.”<sup>36</sup> Regardless, this does not make the timing or outcome of the SIS or SRIS a competitive endeavor “that nonincumbent developers play no part in,” as LS Power suggests.<sup>37</sup> In fact, one of the many benefits of the TIP system is that a Developer, whether incumbent or non-incumbent, has more control over the study process. For example, it is solely within the discretion of the Developer to decide whether to perform a Feasibility Study under the TIP or move directly to the SIS or SRIS.<sup>38</sup> Similarly, under the transition rule proposed by the NYISO, projects currently in the queue have the option to either complete the study they are currently in under Attachment X or Section 3.7 of the OATT or move directly to the comparable study in the TIP.<sup>39</sup>

The NYISO’s approach is indeed different than the approach used by PJM, where PJM addresses the issue by identifying and estimating system upgrades in the course of its evaluation of transmission project proposals. However, the NYISO believes that its approach is preferable in the context of its unique three-prong (reliability, economic and public policy), and all-resource (transmission, generation and demand response) Order No. 1000 planning process. The proposed TIP is largely consistent with the Large Facility Interconnection Procedures—*e.g.*, using the same base case inclusion rules—thereby providing a level playing field for transmission and generation proposals in the Order 1000 Planning Process. In addition, the proposed separation of the interconnection and “Order No. 1000” evaluations is necessary in light of the proposed TIP’s application to transmission projects other than those competing in the NYISO’s CSPP.

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<sup>36</sup> Proposed revisions to OATT Sections 31.2.6.3, 31.2.6.5, 31.4.8.

<sup>37</sup> LS Power Protest at p 4.

<sup>38</sup> Proposed revisions to OATT Section 22.4.2.4.

<sup>39</sup> Proposed revisions to OATT Section 22.3.3.2.

**B. The Commission Should Reject LS Power’s Requested Revisions to Articles 4.1 and 8.1 of the Development Agreements.**

**1. Article 4.1 – Interconnection Requirements for Transmission Project**

As described in Part III.A above, the Commission should reject LS Power’s proposed revisions to change the process by which the NYISO studies the interconnection of proposed transmission projects that are participating in the CSPP. The Commission should similarly reject LS Power’s proposed conforming changes to Article 4.1 of the Development Agreements.<sup>40</sup>

Article 4.1 accurately reflects the interconnection requirements that will apply to a transmission project participating in the CSPP. Moreover, LS Power’s proposal to remove the language from Article 4.1 that describes the application of the TIP transition rules to transmission projects currently in the NYISO’s interconnection queue is unjustified. LS Power has not challenged the underlying transition rules proposed in Section 22.3.3 of Attachment P of the OATT.<sup>41</sup>

**2. Article 8.1 – Termination by the NYISO**

The Commission should also reject LS Power’s request to remove from Article 8.1 the reference to a Responsible Transmission Owner’s ability to recover costs in the event of the termination of the Development Agreement to the extent permitted under the Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (“ISO/TO Reliability Agreement”).<sup>42</sup> The Responsible Transmission Owner is obligated under the ISO/TO Reliability Agreement and OATT Section 31.2.4.3.1 to submit a regulated backstop solution to ensure there

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<sup>40</sup> LS Power Protest at pp 5-6.

<sup>41</sup> See Compliance Filing at pp 12-13.

<sup>42</sup> LS Power Protest at pp 6-7; see ISO/TO Reliability Agreement, 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).

is a solution to timely address a Reliability Need. This obligation is subject to the Responsible Transmission Owner's ability to recover its costs. The Commission has previously upheld in this proceeding a Responsible Transmission Owner's eligibility to recover its costs.<sup>43</sup> As directed by the December Order, the NYISO has revised the Development Agreement and the related tariff provisions to require the Responsible Transmission Owner to execute the Development Agreement if its regulated backstop solution is selected or triggered to address the Reliability Need.<sup>44</sup> It is reasonable to reflect in the Development Agreement the cost recovery rules that are applicable to the Responsible Transmission Owner under the NYISO's tariffs and agreements. Importantly, the language in Article 8.1 that describes a Developer's eligibility for cost recovery in the event that the Development Agreement is terminated does not create any new rights, but simply reflects existing rights in the NYISO's tariffs and agreements, which include the Responsible Transmission Owner's existing right to cost recovery to the extent permitted in the ISO/TO Reliability Agreement.

**C. NYISO's Proposed *Pro Forma* Operating Agreement for Non-Incumbent Transmission Owners Is Comparable to the ISO/TO Agreement and Is Not Unduly Discriminatory or Preferential.**

OATT Section 31.1.7 establishes the process by which an owner of transmission in New York State may become a Transmission Owner, including the requirement that the owner of transmission execute either the Agreement Between New York Independent System Operator and Transmission Owners ("ISO/TO Agreement") or an agreement with the NYISO under terms

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<sup>43</sup> See *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 at P 282 (2014); *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 at P 326 (2013).

<sup>44</sup> The language at issue is included in the Reliability Development Agreement, but not the Public Policy Development Agreement, as there is no Responsible Transmission Owner designated in the Public Policy Transmission Planning Process.

comparable to the ISO/TO Agreement.<sup>45</sup> The NYISO provided for a comparable operating agreement because the terms of the ISO/TO Agreement that was entered into in 1999 reflect the specific circumstances and uncertainty associated with the creation of the NYISO and the changeover from the New York Power Pool. The December Order directed the NYISO to file the comparable operating agreement and demonstrate that it is not unduly discriminatory or preferential.<sup>46</sup>

The Compliance Filing includes the *pro forma* comparable operating agreement (“Operating Agreement”) and describes in detail why each substantive difference between the ISO/TO Agreement and Operating Agreement is reasonable and not unduly discriminatory.<sup>47</sup> Transco and LS Power largely mischaracterize the requirement for comparability by arguing that the Operating Agreement must be identical with the ISO/TO Agreement or else the non-incumbent transmission owners (“NTOs”) will be disadvantaged in the competitive process.<sup>48</sup> With the limited exceptions addressed below, Transco and LS Power fail to provide arguments concerning the specific differences between the ISO/TO Agreement and Operating Agreement that support their claim that these differences are unduly discriminatory and preferential or may disadvantage them in NYISO’s planning process. They rely instead, in large measure, on the

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<sup>45</sup> See *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 at P 38 (2014) (accepting requirement that transmission owner execute ISO/TO Agreement or comparable agreement). As part of the Compliance Filing, the NYISO is proposing further revisions to this section to address the process by which a non-incumbent Developer will enter into the Operating Agreement.

<sup>46</sup> December Order at P 20.

<sup>47</sup> Compliance Filing at pp 44-53.

<sup>48</sup> LS Power Protest at pp 8-9 (“[T]he proposed agreement should be *identical* to the NYISO Transmission Owners Agreement except to the extent that a provision no longer reflects actual NYISO operations”) (emphasis added); Transco Comments at p 3.

general argument that the terms of the agreements must be identical and leave it up to the Commission to parse out their specific concerns with each of these differences.<sup>49</sup>

In response to their general argument, the plain meaning of “comparable” does not equate to “identical.” The Commission has not interpreted “comparable” to mean “identical” in other contexts within the Commission’s jurisdiction and should not do so here.<sup>50</sup> The Commission’s stated position in the December Order was not that the terms of the agreements could not include differences but that these differences could not be unduly discriminatory or preferential.<sup>51</sup> As described in the Compliance Filing, and reiterated below in response to the comments and protests, the differences between the agreements are reasonable and are not unduly discriminatory or preferential.<sup>52</sup>

## **1. Section 1.01 - Definitions**

As with the ISO/TO Agreement, the Operating Agreement incorporates the definitions of the Independent System Operator Agreement (“ISO Agreement”). However, the term “Transmission Owner” as defined in the ISO Agreement for stakeholder governance purposes could be read to exclude an NTO from being a Transmission Owner for purposes of the

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<sup>49</sup> LS Power Protest at p 9 (“Although there are numerous non-comparable provisions, LS Power offers comments on a few of the provisions of the proposed nonincumbent operating agreement.”); Transco Comments at p 3 (“However, throughout the NTO Agreement, there are numerous instances where the NYISO actually revised the language in ISO/TO Agreement unnecessarily.”)

<sup>50</sup> See, e.g., *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004), *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Assoc. of Reg. Util. Comm’rs v. FERC*, 475 F.3d 1277 (2007) (clarifying that “comparable” does not mean identical for “rates, terms, and conditions of the reciprocal service” offered by public utilities); see also *Preventing Undue Discrimination and Preference in Transmission Service*, Order 890, FERC Stats. & Regs. ¶ 31,421 at P 495 (2007) (“[W]e emphasize the similarly-situated customers must be treated on a comparable basis, not that each and every transmission customer should be treated the same.”); *Midwest Independent Transmission Operator*, 152 FERC ¶ 61,033 (2015).

<sup>51</sup> December Order at PP 77-79.

<sup>52</sup> See, e.g., *California Independent System Operator Corp.*, 119 FERC ¶ 61,076 at P 369 (2007) (“[T]he FPA does not prohibit all discrimination, only undue discrimination. In general, discrimination is ‘undue’ when there is a difference of rates, terms or conditions among similarly situated customers. The Commission has broad discretion in determining when discrimination is undue.”) (internal citations omitted).

Operating Agreement and the NYISO's tariffs.<sup>53</sup> For this reason, the NYISO indicated in Section 1.01 that an NTO will be a Transmission Owner for purposes of the NYISO Tariffs and the Operating Agreement notwithstanding the definition of Transmission Owner in the ISO Agreement. Transco objects, however, to indicating in Section 1.01 that the NTO will be a Transmission Owner for purposes of the NYISO's Tariffs.<sup>54</sup> The Commission should accept Section 1.01 without modification.

A new owner of transmission in New York that executes the Operating Agreement will satisfy the enrollment requirements in OATT Section 31.1.7 to become a Transmission Owner.<sup>55</sup> In addition, the new owner of transmission will satisfy the definition of "Transmission Owner" in the NYISO's Tariffs because it will be an entity "that owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff."<sup>56</sup> For these reasons, the Operating Agreement naturally indicates that the NTO will be a Transmission Owner that enjoys all of the obligations and rights as a provider of transmission service under the NYISO's Tariffs. Moreover, the NYISO is reviewing whether any revisions will be required to the rights and obligations of a Transmission Owner specified in its tariffs to accommodate any differences between existing Transmission Owners and new owners of transmission. As accepted by the Commission, the NYISO will file any conforming change to its tariffs on September 13, 2016.<sup>57</sup>

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<sup>53</sup> The definition of "Transmission Owner" in the ISO Agreement includes a requirement that the entity have executed the ISO/TO Agreement and owns at least 100 circuit miles of 115 kV or above in New York State.

<sup>54</sup> Transco Comments at p 6.

<sup>55</sup> The NYISO is similarly proposing in the Compliance Filing to remove the requirement in OATT Section 31.1.7 that a new owner of transmission must satisfy the definition of Transmission Owner in the ISO Agreement, which could be read to exclude certain non-incumbent owners of transmission from being a Transmission Owner under the NYISO tariffs.

<sup>56</sup> OATT Section 1.20; *see also* Market Administration and Control Area Services Tariff Section 2.20.

<sup>57</sup> *New York Independent System Operator, Inc.*, Notice of Extension of time, Docket No. ER13-102-007 (March 23, 2016).

## **2. Section 2.02 – Transmission System Operation**

The Commission should reject LS Power’s argument that it is improper to indicate in Section 2.02 that the NTO is responsible for ensuring that the operation, maintenance, and modification of its facilities are performed in accordance with “any transmission interconnection agreement(s) for its facilities.”<sup>58</sup> The addition of the reference to the interconnection agreement reflects the present-day reality that any new transmission facility within the New York State Transmission System will have an interconnection agreement consistent with the NYISO’s processes, and the Operating Agreement should similarly reflect this reality. LS Power has not indicated how NTOs are disadvantaged by this requirement as existing Transmission Owners will have to comply with any interconnection agreement that they execute, notwithstanding the absence of this language in the ISO/TO Agreement, based upon principles of contract law.

The Commission should also reject LS Power’s argument that Section 2.02 of the Operating Agreement should include the requirement in Section 2.02 of the ISO/TO Agreement that the NYISO Operating Committee promulgate the procedures for the Transmission Owner’s control center to take over in the event of an emergency.<sup>59</sup> At the time the ISO/TO Agreement was executed, there were no established procedures and Section 2.02 created the process for developing them. As a result of the maturation of the NYISO’s processes, the NYISO incorporated and expanded upon the emergency procedures described in the ISO/TO Agreement in formulating the NYISO’s Emergency Operations Manual (Manual 15), which applies to all Transmission Owners—incumbent and non-incumbent—within the New York State

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<sup>58</sup> LS Power Protest at pp 9-10.

<sup>59</sup> *Id.*



Transmission System.<sup>60</sup> As these procedures have already been established through the NYISO's shared governance process, the requirement to establish them is not needed in the *pro forma* Operating Agreement.

### **3. Section 2.03 – Local Area Transmission System Facilities**

The Commission should reject LS Power's argument that Section 2.03 of the Operating Agreement is not comparable to the ISO/TO Agreement because NTOs, to the extent that they have Local Area Transmission System Facilities,<sup>61</sup> must comply with a request "from the Transmission Owner(s) to which its facilities are interconnected" to take action to coordinate the operation of the facilities.<sup>62</sup> As described below, it is not unjust or unreasonable, unduly discriminatory, or preferential to include this requirement in the Operating Agreement, despite the absence of a related requirement in the ISO/TO Agreement.

At the NYISO's inception, the Transmission Owners that executed the ISO/TO Agreement all had Transmission Districts, *i.e.*, geographic areas where they served end-use customers, and served as Load Serving Entities ("LSEs"). Each existing Transmission Owner had legal obligations under New York State Law to ensure the reliable and safe operation of its facilities in its Transmission District.<sup>63</sup> NTOs will likely not be responsible for a Transmission District or charged with the legal obligation to maintain reliability for the local system serving end-use consumers within which its transmission facilities are located. To the extent that a

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<sup>60</sup> See generally NYISO Emergency Operations Manual (Manual 15) (April 2016), available at [http://www.nyiso.com/public/webdocs/markets\\_operations/documents/Manuals\\_and\\_Guides/Manuals/Operations/em\\_op\\_mnl.pdf](http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Operations/em_op_mnl.pdf); Article 8 of ISO Agreement.

<sup>61</sup> A "Local Area Transmission System Facility" is a transmission facility that does not fall within the category of NTO Transmission Facilities Under ISO Operational Control or NTO Transmission Facilities Requiring ISO Notification. These facilities are generally at or below 138 kV in New York City and Long Island and at or below 115 kV in the rest of New York State.

<sup>62</sup> LS Power Protest at pp 10-11.

<sup>63</sup> See Public Service Law § 65 ("Every gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.").

NTO's operation of its Local Area Transmission System Facilities may affect the local reliability of the Transmission Districts in which the NTO's facility is interconnected, it is reasonable and indeed necessary to require the NTO to comply with a request "from the Transmission Owner(s) to which its facilities are interconnected" to coordinate the operation of the facilities to maintain local reliability. Should an NTO, sometime in the future, have its own Transmission District and have similar obligations under New York State law, the parties will have the ability to enter into a non-conforming Operating Agreement to address that situation.<sup>64</sup>

#### **4. Section 2.07 – Design, Maintenance and Rating Capabilities**

The Commission should similarly reject LS Power's contention that Section 2.07 is improper because it adds a requirement (not included in the ISO/TO Agreement) that NTOs must comply with the local reliability rules and planning criteria of a Transmission Owner to which the NTO's facilities are interconnected.<sup>65</sup> As described above, existing Transmission Owners have the legal obligation to maintain the reliability of their local transmission systems within their Transmission Districts, and the NTO will be developing transmission facilities within one or more of those Transmission Districts. The Operating Agreement merely requires the NTO to comply with existing local reliability rules and planning criteria. Importantly, this provision equally applies reliability rules to both existing Transmission Owners and the NTOs, which must all comply with the reliability rules of the North American Electric Reliability Corporation ("NERC"), the Northeast Power Coordinating Council, Inc. ("NPCC"), and the New York State Reliability Council, LLC ("NYRSC"), which include local reliability rules, and any other local reliability rules and planning criteria applicable to a Transmission District.<sup>66</sup>

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<sup>64</sup> See Proposed revisions to OATT Sections 31.1.7.3, 31.1.7.4.

<sup>65</sup> LS Power Protest at p 11.

<sup>66</sup> See New York Reliability Rules, *available at* <http://www.nysrc.org/NYSRCReliabilityRulesComplianceMonitoring.html>.

## 5. Sections 2.08 and 2.10

The Commissions should also reject LS Power's arguments that Sections 2.08 and 2.10 of the Operating Agreement are not comparable because NTOs are required to provide notification of maintenance schedules for their transmission facilities designated as NTO Transmission Facilities under ISO Operational Control (Section 2.08) and "equipment malfunctions and failures and forced transmission outages" (Section 2.10) to, among others, the NYISO and the Transmission Owner to which the NTO's facilities is interconnected.<sup>67</sup> LS Power argues that there is no similar requirement in the ISO/TO Agreement for existing Transmission Owners to provide the information to each other or the NTOs.

LS Power's statement that Section 2.09 of the ISO/TO Agreement (the equivalent of Section 2.10 in the Operating Agreement) does not place an obligation on existing Transmission Owners "with respect to each other" contravenes the terms of the ISO/TO Agreement. Section 2.09 of the ISO/TO Agreement expressly mandates that each Transmission Owner supply results of investigation to "*other* Transmission Owners," which means existing Transmission Owners.<sup>68</sup>

Furthermore, the absence of an obligation for an existing Transmission Owner to provide such information to an NTO reflects the fact that NTOs are not expected to be responsible for Transmission Districts and, consequently, to have a legal obligation to ensure the reliability of a local transmission system. Conversely, operational control of the local transmission system is largely vested with the existing Transmission Owners, and the interconnection of the NTO may not only affect the bulk power transmission facilities but also the local transmission system. Without the legal obligation of an NTO to serve a Transmission District or end-use consumers, a reciprocal provision requiring the existing Transmission Owners to provide maintenance and

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<sup>67</sup> LS Power Protest at pp 11-12.

<sup>68</sup> See Agreement Between New York Independent System Operator and Transmission Owners, Section 2.09.

outage information would have no practical effect. Should an NTO have such obligations, an identical requirement for the existing Transmission Owners to provide information under Sections 2.08 and 2.10 to the NTO can be addressed in a non-conforming Operating Agreement.

## **6. Article 4.0 – Assignment**

The Commission should reject Transco's request that the NYISO revise Article 4.0 in the Operating Agreement to remove the NYISO's ability to assign its rights and responsibilities under the agreement, since the NYISO does not have a similar right under the NYISO/TO Agreement. Transco argues that the NYISO may not abdicate its role without the approval of the Transmission Owners, including the NTOs, because there is a distinct difference between the owner of transmission assets assigning its responsibilities versus the market or transmission grid operator assigning the same.<sup>69</sup>

Nothing in the assignment provision entails the NYISO abdicating its responsibilities as the market and transmission grid operator. Rather, the provision would simply allow the NYISO to assign its rights and obligations under the Operating Agreement, with the applicable Commission approval, in the event that the NYISO has a corporate successor entity to which the entirety of its rights and obligations would be assigned. Reciprocal assignment rights are a standard commercial term that recognizes that entities bound to an agreement may restructure over time.<sup>70</sup> Nor does Transco indicate how the reciprocal assignment provisions under Article 4.0 could result in unjust or unreasonable, unduly discriminatory, or preferential treatment of NTOs.

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<sup>69</sup> Transco Comments at p 4.

<sup>70</sup> The absence of a reciprocal provision in the ISO/TO Agreement was due to the circumstances at ISO formation, when the NYISO was a new not-for-profit corporation without any assets or proven track record in administering its tariffs or operating the New York State Transmission System or markets.

## 7. Article 5.0 – Limitations of Liability and Indemnification

LS Power and Transco object that Article 5.0 concerning the reciprocal limitations on liability and indemnification between the NYISO and the NTOs is not provided for in the ISO/TO Agreement. Transco further argues that the lack of indemnification by the Transmission Owners of the NYISO, in the ISO/TO Agreement is reasonable under the Operating Agreement because the NYISO is already indemnified by ratepayers.<sup>71</sup>

The Commission should reject arguments that the *pro forma* Operating Agreement must perpetuate the non-reciprocal indemnification and liability provisions under the ISO/TO Agreement that date back to the creation of the NYISO.<sup>72</sup> Under the pre-ISO environment in New York State, the Transmission Owners (commonly referred to as “Member Systems” at the time)<sup>73</sup> not only owned the transmission facilities but were also responsible for the critical functions in operating those assets for the benefit of their native load customers. The non-reciprocal liability provisions sought to protect the Transmission Owners and their customers from “significant financial risks and burdens” in transferring operational control over to the NYISO.<sup>74</sup> The non-reciprocal indemnification and limitation of liability provisions protecting the Transmission Owners and their native load customers addressed the specific concerns of

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<sup>71</sup> LS Power Protest at pp 12-13; Transco Comments at pp 4-6.

<sup>72</sup> *Agreements to Form an Independent System Operator, New York Power Exchange, And New York State Reliability Council, and To Provide State Wide Transmission Service*, Docket No. ER97-1523-000, OA97-470-000 (January 31, 1997).

<sup>73</sup> “Member Systems” included Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., the Power Authority of the State of New York, and Rochester Gas and Electric Corporation. *See New York Independent System Operator, Inc.*, Supplemental filing to the Comprehensive Proposal to Restructure the New York Wholesale Electric Market, FERC Docket Nos. ER97-1523-000, OA97-470-000, ER97-4234-000, n. 2 (December 19, 1997).

<sup>74</sup> *New York Independent System Operator, Inc.*, Supplemental filing to the Comprehensive Proposal to Restructure the New York Wholesale Electric Market, FERC Docket Nos. ER97-1523-000, OA97-470-000, ER97-4234-000 at pp 38-39 (December 19, 1997) (“These liability provisions [were] designed to protect the [Transmission Owners] and their native load customers from the risks associated with transferring critical functions to the ISO, like exercising operational control over [Transmission Owner] assets and administering the ISO tariff.”).

transferring operational control of assets to an untested entity knowing “the inherent complexities of . . . electricity production and delivery.”<sup>75</sup>

The NYISO is now a well-established entity with over sixteen years of experience operating the New York State Transmission System and administering the wholesale markets in New York, with multi-layer systems, procedures, and policies in place to protect Market Participants from financial risk due to NYISO operations. In fact, the proposed sections appropriately reflect existing provisions in the OATT that limit the liability of the NYISO for new interconnecting Transmission Owners.<sup>76</sup> The Commission has also consistently provided special liability protections to ISOs or RTOs to protect these entities—created and regulated by the Commission—from claims that could threaten them with bankruptcy.<sup>77</sup> Transco’s additional argument that there is no justification for the NYISO to be indemnified by an NTO given that it “is effectively indemnified by the ratepayers” is incorrect. Nothing in NYISO’s formation documents, tariffs and procedures indicate that the NYISO is indemnified against losses by New York ratepayers. Imposing a non-reciprocal arrangement on the NYISO would not be commercially reasonable or justified given the valid and relevant differences between the nature of the NTOs today and the Transmission Owners in 1999, and the nature of their respective relationships with the NYISO.

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<sup>75</sup> *Id.* at p 39.

<sup>76</sup> *See* OATT Section 2.11.3(b).

<sup>77</sup> The NYISO described this Commission precedent in detail in a recent submission to the Commission. *See New York Independent System Operator, Inc.*, Request for Rehearing and Clarification of New York Independent System Operator, Inc., Docket No. ER13-102-008 at pp 5-12 (January 27, 2016).

## **8. Article 6.0– Other Provisions**

LS Power comments on Sections 6.01, 6.02 and 6.03(c) of the Operating Agreement. These provisions permit an NTO to terminate the Operating Agreement and withdraw from NYISO Tariffs and ISO Related Agreements, and they establish an NTO's obligations for the operation, maintenance and modification of its transmission facilities thereafter. LS Power does not object to these provisions, but it argues that the ISO/TO Agreement should be updated to address comparable obligations.<sup>78</sup> Section 6.10 of the Operating Agreement provides each Party with access to equitable remedies for a breach by the other Party. Here, LS Power argues that the ISO/TO Agreement, which provides access to such remedies only to the Transmission Owners, should be updated to provide all parties to that agreement with access to equitable remedies or, in the alternative, that the Operating Agreement should be revised to provide access to equitable remedies only to an NTO.<sup>79</sup>

Consistent with the NYISO's comments above, all of these provisions in Article 6.0 of the Operating Agreement are reasonable terms between contracting commercial parties. LS Power acknowledges in its comments that these provisions are unobjectionable, and LS Power fails to explain how any NTO would be treated in an unduly discriminatory or preferential manner, other than simply saying that the provisions are not identical to the ISO/TO Agreement.<sup>80</sup> Again, comparability does not require identicalness. Accordingly, the Commission should accept the termination, withdrawal, and remedies provisions of the Operating Agreement as just and reasonable.

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<sup>78</sup> LS Power Protest at pp 13-14.

<sup>79</sup> *Id.* at p 14.

<sup>80</sup> *Id.* at pp 13-14.

#### **IV. CONCLUSION**

**WHEREFORE**, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the Compliance Filing in the above-referenced docket without requiring any modifications.

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 27<sup>th</sup> day of April 2016.

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