UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	)	Docket No. ER20-1105-000

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

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") respectfully submits this request for leave to answer and answer ("Answer") in response to the March 19, 2020, protest of LSP Transmission Holdings II, LLC ("LSP Transmission") in the above-captioned proceeding.[2]

The NYISO proposed revisions to its Open Access Transmission Tariff ("OATT")[3] and Market Administration and Control Area Services Tariff ("Services Tariff") to establish a Short-Term Reliability Process in its February 27, 2020 filing ("STRP Filing").[4] The STRP Filing proposed to convert the NYISO's existing Generator Deactivation Process into a more cohesive process that will better integrate the NYISO's long- and short-term reliability planning processes and make more efficient use of available resources. In order to achieve its overarching goals, the NYISO proposed to amend its existing requirements that address when the NYISO may designate a Responsible Transmission Owner as the sole entity to develop a regulated (transmission) solution to address time-sensitive reliability needs. The amendments to the

[1] 18 C.F.R. § 385.213.

[2] *New York Independent System Operator, Inc.*, Protest of LSP Transmission Holdings II, LLC, Docket No. ER20-1105-000 (March 19, 2020) ("Protest").

[3] Capitalized terms not defined in this Answer shall have the meaning set forth in the STRP Filing or, if not defined therein, in Section 1 of the OATT, Section 2 of the Services Tariff, or in the proposed revisions to Sections 31.1.1 or 38.1 of the OATT submitted with the STRP Filing.

[4] *New York Independent System Operator, Inc.*, Proposed Tariff Revisions to Implement Short-Term Reliability Process, Docket No. ER20-1105-000 (February 27, 2020) ("STRP Filing").

"Near-Term Reliability Need" requirements proposed in the STRP Filing will apply not only to time-sensitive reliability needs resulting from a Generator's deactivation, but also to other time-sensitive reliability needs identified in the Short-Term Reliability Process that affect the New York State Bulk Power Transmission Facilities ("BPTFs").

On March 19, 2020, LSP Transmission filed a protest of the NYISO's STRP Filing. It was the only entity to protest the STRP Filing, which was unanimously approved by the NYISO's Management Committee (with one abstention). In its Protest, LSP Transmission argues that the NYISO has not shown that its proposed revisions to the Near-Term Reliability Need process are just and reasonable and requests that the Commission either reject the STRP Filing or require the NYISO to adopt certain modifications that LSP Transmission proposes in its Protest.

The Commission should reject LSP Transmission's Protest and accept the NYISO's proposed Short-Term Reliability Process tariff revisions without modification. As detailed in the STRP Filing and below, the NYISO's proposed revisions are just and reasonable. The NYISO proposes to retain its currently effective Tariff exemption for addressing time-sensitive Generator Deactivation Reliability Needs without modification. The changes in the STRP Filing propose a narrow exemption from the competitive transmission requirements in the NYISO's reliability planning processes under limited, carefully drawn circumstances when the NYISO must address a time-sensitive reliability need without delay. The proposed revisions fully comply with the five criteria that the Commission has established for an independent system operator ("ISO") or regional transmission organization ("RTO") to designate a local

Transmission Owner to address a time-sensitive reliability need without commencing a competitive solicitation process (the "Five Criteria").[5]

The NYISO discussed its proposed Short-Term Reliability Process revisions in detail at multiple meetings with the NYISO's stakeholders, including LSP Transmission, and carefully considered stakeholder input in developing the proposed revisions. As explained below, LSP Transmission's proposed revisions improperly seek to modify existing NYISO tariff requirements, are inconsistent with prior Commission determinations, or propose changes that do not work within the context of the NYISO's region and rules.

I. 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.[6] The NYISO's Answer to the Protest in this proceeding satisfies those standards and should be accepted because it addresses inaccurate or misleading statements, and provides clarification and 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.

[5] *See PJM Interconnection, L.L.C., et al.*, 142 FERC ¶ 61,214 at P 248 (2013) ("PJM 2013 Order") (establishing Commission's Five Criteria); *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 236 (2013) (same)*; Southwest Power Pool, Inc., et al.*, 144 FERC ¶ 61,059 at P 196 (2013) (same).

[6] *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).

II. BACKGROUND

In its STRP Filing, the NYISO proposed revisions to Section 38 of its OATT to establish a comprehensive Short-Term Reliability Process, which builds on the existing framework of the NYISO's currently effective Generator Deactivation Process. The NYISO proposes to conduct quarterly Short-Term Assessment of Reliability ("STAR") studies to simultaneously evaluate: (i) the reliability impacts that result from a Generator becoming Retired, entering a Mothball Outage, or being unavailable due to an ICAP Ineligible Forced Outage (collectively, "deactivation"), and (ii) the reliability impacts of other types of changes that may affect the BPTFs, such as changes in load and transmission.[7]

Sections 38.1, 38.3.6, and 38.4.2.4 of the NYISO's currently effective OATT establish the process by which the NYISO identifies time-sensitive "Near-Term Generator Deactivation Reliability Needs" and designates a Responsible Transmission Owner as the sole entity to develop a regulated (transmission) solution to address the need. A Near-Term Generator Deactivation Reliability Need is a Generator Deactivation Reliability Need that the NYISO determines will arise within three years of the conclusion of the 365-day deactivation notice period – *i.e.*, the 365 days that follow the Generator Deactivation Assessment Start Date.[8] As part of the submission of its proposed Near-Term Generator Deactivation Reliability Need rules,

[7] Proposed revisions to OATT Sections 38.1 (definition of "Short-Term Assessment of Reliability (STAR)") and 38.3.5.1.

[8] *See* Section 38.1 of the OATT (definition of "Near-Term Generator Deactivation Reliability Need"). The Generator Deactivation Assessment Start Date is the date on which (i) the NYISO issues a written notice to a Market Participant indicating that the Generator Deactivation Notice for its Generator is complete or (ii) a Market Participant's Generator enters into an ICAP Ineligible Forced Outage. *See id.* (definition of "Generator Deactivation Assessment Start Date").

the NYISO demonstrated how they comply with the Commission's Five Criteria.[9] The Commission accepted these rules.[10]

In its STRP Filing, the NYISO proposed to supplement the requirements in Section 38.3.6 of its OATT, so that the renamed "Near-Term Reliability Need" process will apply to all Short-Term Reliability Process Needs. Under the proposal that is currently before the Commission, the NYISO will continue to apply its existing rules that the Commission previously accepted concerning time-sensitive Generator Deactivation Reliability Needs. For Reliability Needs on the BPTFs that are not Generator Deactivation Reliability Needs, the NYISO will designate a Responsible Transmission Owner as the sole entity to develop a regulated (transmission) solution to address the need if it arises within three years of the posting of the STAR in which the need is identified.[11] The NYISO explained in the STRP Filing how the revised Near-Term Reliability Need requirements continue to comply with each of the Commission's Five Criteria.[12]

[9] The NYISO proposed the currently effective Near-Term Generator Deactivation Reliability Need requirements as part of its compliance filing to establish reliability-must-run requirements and explained how it satisfied each of the Five Criteria. *See* New York Independent System Operator, Inc., Compliance Filing, Docket No. ER16-120-003 at 17-19 (September 20, 2016).

[10] The Commission reviewed the NYISO's filing and in a November 16, 2017, Order in Docket Nos. ER16-120-001, -003, EL15-37-002 accepted the NYISO's compliance filing in large part, including the Near-Term Generator Deactivation Reliability Needs rules, but rejected other provisions and required the NYISO to submit a further compliance filing. *New York Independent System Operator, Inc.*, Order on Compliance and Rehearing, 161 FERC ¶ 61,189 at P 11 (2017) (accepting the NYISO's compliance filing with the exception of specific matters described in paragraph 11).

[11] Proposed revision to OATT Section 38.1 (definition of "Near-Term Reliability Need").

[12] STRP Filing at 17-21. The NYISO proposed to revise one process step to more closely align it with one of the Commission's Five Criteria. Specifically, the tariff currently requires that the NYISO provide the appropriate stakeholder working group a reasonable opportunity to provide comments to the NYISO on its written explanation concerning its decision to designate the Responsible Transmission Owner as the entity to construct and own the solution. This provision, however, does not expressly incorporate the Commission's directive that an ISO/RTO make such comments publicly available. Accordingly, the NYISO proposed to insert in Section 38.3.6.2.3 a requirement that it "publicly post any written comments that the ISO receives on its web site." *Id.* at 20.

III. ANSWER

A. The NYISO's Near-Term Reliability Need Requirements Are Just and Reasonable and Comply with the Commission's Existing Requirements for Designating a Transmission Owner to Address a Time-Sensitive Reliability Need

On March 19, 2020, LSP Transmission submitted a Protest requesting that the Commission reject the STRP Filing. In its Protest, LSP Transmission asserts that the NYISO has not demonstrated that its proposed Near-Term Reliability Need exemption from competition is just and reasonable; that the NYISO did not address the Commission's show cause order concerning the implementation of related exemptions in ISO New England Inc. ("ISO-NE"), PJM Interconnection, L.L.C. ("PJM"), and Southwest Power Pool, Inc. ("SPP");[13] and that the NYISO did not incorporate certain process modifications favored by LSP Transmission.

The Commission should reject LSP Transmission's Protest and accept the NYISO's proposed Short-Term Reliability Process tariff revisions without modification. As detailed in the STRP Filing and this Answer, the NYISO's proposed revisions are just and reasonable. The NYISO proposes to retain its currently effective Tariff exemption for addressing time-sensitive Generator Deactivation Reliability Needs without modification. The changes in the STRP Filing propose a narrow exemption from the competitive transmission requirements in the NYISO's reliability planning processes under limited, carefully drawn circumstances when the NYISO must address a time-sensitive reliability need without delay. The NYISO's revised process continues to comply with the Commission's Five Criteria.[14] Finally, the NYISO's proposed tariff requirements for its Short-Term Reliability Process were developed through an extensive

[13] *See ISO New England Inc., et al.*, Order Instituting Section 206 Proceedings, 169 FERC ¶ 61,054 (2019).

[14] LSP Transmission's Protest only questions NYISO's compliance with the first of the Five Criteria. The NYISO responds to LSP Transmission's argument in Part III.B.1 of this Answer.

shared-governance process with stakeholders and approved unanimously (with one abstention) by the NYISO's Management Committee.

Both the NYISO's currently effective and proposed reliability planning processes predominantly use competition to select a regulated transmission solution to address a reliability need, subject to the narrow exemption for time-sensitive Generator Deactivation Reliability Needs that the Commission has previously accepted.[15] The NYISO's Reliability Planning Process, its existing Generator Deactivation Process, and its proposed Short-Term Reliability Process each establish a strong preference for market-based solutions.[16] The NYISO only considers regulated solutions if sufficient market-based solutions are not available on a timely basis to meet a reliability need,[17] and the NYISO can select a generation solution that has a "distinctly higher net present value" than a proposed regulated transmission solution.[18]

Contrary to LSP Transmission's claim that the process creates a right of first refusal for needs that arise within four years, only reliability needs identified in the Short-Term Reliability Process that arise within one of the tariff-specified three-year periods will be designated to the Responsible Transmission Owner to develop a regulated (transmission) solution when necessary. All other reliability needs will be subject to the competitive transmission selection process set

[15] The proposed Near-Term Reliability Need exemption from a competitive transmission process will only apply to the NYISO's Short-Term Reliability Process, and not to the long-term Reliability Planning Process or the NYISO's economic or public policy transmission planning processes.

[16] *See, e.g.*, OATT Sections 31.2.4.3.1 (requiring a Responsible Transmission Owner to submit "a regulated solution or combination of solutions that shall serve as a backstop to meet the Reliability Need if requested by the ISO due to the lack of sufficient viable market-based solutions…"), 31.2.8.1 (providing that NYISO will not trigger regulated solution if market-based solutions are timely progressing to meet Reliability Need), 38.6.2 (providing that if the NYISO determines there are adequate market-based or demand response solutions to address need, it will conclude Generator Deactivation Process or, as proposed, the Short-Term Reliability Process).

[17] OATT Section 38.6.2.

[18] *See* OATT Section 38.10.2.

forth in the Short-Term Reliability Process or Reliability Planning Process, as applicable.[19] Finally, consistent with the Five Criteria, there will always be a public record to document the NYISO's implementation of the solution selection process.[20]

It is just and reasonable for the NYISO to designate only the Responsible Transmission Owner(s) in the tariff-prescribed, limited circumstances to develop solutions for and to address time-sensitive reliability needs to avoid delays, as the NYISO must ensure compliance with all North American Electric Reliability Corporation ("NERC"), Northeast Power Coordinating Council, Inc. ("NPCC"), and New York State Reliability Council, L.L.C. ("NYSRC") reliability standards. Even a truncated, competitive solicitation and selection process would add months or longer to the timeframe for addressing an identified reliability need. The NYISO's proposed requirements appropriately balance the need to avoid delays in addressing time-sensitive reliability needs with the Commission's interest in removing barriers to permit non-incumbent transmission developers to propose and be selected to construct alternative solutions.

As detailed on pages 17-21 of the STRP Filing, the updated Near-Term Reliability Need process continues to comply with each of the Commission's Five Criteria. The Commission has

[19] *See* proposed revisions to OATT Sections 31.1.2, 38.2. LSP Transmission asserts that the NYISO's long-term planning process with a ten-year horizon should continue to be the NYISO's dominant planning process and short-term planning should not be incentivized. LSP Transmission Protest at 11-12. Given potential generator deactivations as well as new resource interconnections that may occur in New York to accommodate state initiatives, the NYISO needs the ability to identify and address reliability concerns across both short-term and long-term planning horizons. The NYISO's Reliability Planning Process is biennial. This is too infrequent to permit the NYISO to evaluate and take steps to address all of the potential changes that may occur. The NYISO currently assesses the reliability impacts of generator deactivations individually and on an *ad hoc* basis. For the reasons it explained on pages 6 through 8 of the STRP Filing, the NYISO should be permitted to broaden the scope of its review in order to perform informed and effective short-term planning.

[20] *See* proposed revisions to OATT Sections 38.3.6.2 and 38.10.5.

consistently applied these criteria in accepting the existing Generator Deactivation Process in New York and similar time-sensitive reliability need processes in other ISO/RTO regions.[21]

In its Protest, LSP Transmission proposes that the Commission require the NYISO not only to comply with the Commission's existing Five Criteria but also to comply with as-yet unannounced, possible future changes to those standards. Specifically, on October 17, 2019, the Commission instituted Section 206 proceedings to consider how ISO-NE, PJM, and SPP have implemented requirements that permit them to designate the local Transmission Owner to address time-sensitive reliability needs. The Commission indicated its concerns that these ISO/RTOs may be implementing their exemptions in a manner that is inconsistent with or more expansive than the Five Criteria. Accordingly, the Commission posed a number of questions to ISO-NE, PJM, and SPP concerning how each is implementing its requirements under the specific circumstances of its region and requested input for the Commission's consideration on certain potential future changes to the Commission's existing criteria.

The NYISO is not a party to the Section 206 proceedings. Since commencing its Generator Deactivation Process, which became effective in October of 2015, the NYISO has not identified a time-sensitive reliability need. To date, all transmission needs identified in the NYISO's planning processes have been identified through the NYISO's Public Policy Transmission Planning Process requirements and have been addressed through competitive solicitations. The NYISO is not obligated to respond to comments submitted in the Section 206 proceedings addressing the tariffs of other ISO/RTOs, or to the alleged circumstances that have

[21] *See* footnote 5 above; *see also Midcontinent Independent System Operator, Inc.*, 167 FERC ¶ 61,258 at PP 121-122 (2019).

occurred in other regions, in order to demonstrate that its proposed OATT revisions are just and reasonable and comply with the Commission's requirements.

The NYISO developed its proposed tariff revisions to comply with the Commission's existing requirements, accounting for the unique circumstances of the NYISO's region. The NYISO was aware of the Section 206 proceedings and discussed with its stakeholders the Commission's Five Criteria and how the NYISO proposed to implement each criterion in its proposed Short-Term Reliability Process revisions.[22] On pages 17-21 of its STRP Filing and in Section III.B.1 of this Answer (below) the NYISO explains how its proposal satisfies the Commission's Five Criteria.[23] The Commission has not issued an order in any of the Section 206 proceedings or otherwise changed the Five Criteria, and all of the Section 206 proceedings are being contested. The NYISO's proposed Short-Term Reliability Process rules comply with the only set of Commission criteria that exist today. The Commission should reject LSP Transmission's attempts to require that the NYISO comply with hypothetical future changes in the Commission's requirements that align with LSP Transmission's interests.

[22] *See Review of FERC Section 206 Exception for Immediate Need Reliability Projects* Presentation, NYISO Electric System Planning Working Group/Transmission Planning Advisory Subcommittee (November 18, 2019); *available at*: https://www.nyiso.com/documents/20142/9274414/05%20FERC_206.pdf/443d5eaf-4030-8392-f00c-68d614f948bd.

[23] LSP Transmission's Protest only questions whether the proposed Short-Term Reliability Process complies with the first of the Five Criteria, so the NYISO's response in Part III.B.1 below is similarly limited in scope.

B. The Commission Should Reject LSP Transmission's Proposed Modifications for the NYISO's Near-Term Reliability Need Process

The Commission should reject LSP Transmission's request that it direct the NYISO to make certain proposed modifications to both existing NYISO tariff requirements and certain Short-Term Reliability Process tariff revisions.[24]

The NYISO conducted an extensive stakeholder process to develop just and reasonable Short-Term Reliability Process requirements, including updates to the Near-Term Reliability Need process, that create important efficiencies and enhancements to the NYISO's reliability planning within the unique circumstances of the NYISO's region and rules. The NYISO worked with its stakeholders across all sectors to achieve compromises among competing interests to develop rules that obtained broad support with a unanimous vote to submit the tariff revisions at the stakeholder Management Committee. The Commission should not permit the Protest to defeat efforts to achieve a broad stakeholder consensus supporting the STRP Filing.

In response to the NYISO's Section 205 filing, the Commission is required to determine whether the NYISO's proposed revisions are just and reasonable, not whether there might be other potential just and reasonable requirements that could instead or also be applied.[25] As explained in Part III.A of this Answer above, the NYISO's proposed Near-Term Reliability Need rules are just and reasonable. In addition, as detailed below, LSP Transmission's proposed modifications improperly seek to modify existing NYISO tariff requirements, are inconsistent with prior Commission determinations, or propose changes that do not work within the context

[24] LSP Transmission Protest at 13.

[25] *See Blumenthal v. FERC*, 552 F.3d 875, 883 (D.C. Cir. 2009) ("The Supreme Court has repeatedly rejected the argument 'that there is only one just and reasonable rate possible…'") (quoting *Mobil Oil Corp. v. Fed. Power Comm'n*, 417 U.S. 283, 316, 94 S. Ct. 2328 (1974)); *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one.")

of the NYISO's region and rules. Further, the NYISO disagrees with LSP Transmission's argument that its proposed changes are merely the type of minor modifications that the Commission is permitted to direct the NYISO to make as a condition of accepting its Section 205 filing.[26] Rather, the proposed modifications would significantly alter the Near-Term Reliability Need requirements approved in the NYISO's stakeholder process and proposed in the STRP Filing. The Commission lacks the authority to impose a new rate scheme that is different than the one proposed by the utility submitting the Section 205 filing.[27]

The Commission's acceptance of these process enhancements for implementation on May 1, 2020 is crucial in light of the accelerating pace of change in the New York power system. These changes include new emission requirements[28] and state policies[29] that will result in wholesale changes to New York's generation fleet and transmission system. The Short-Term Reliability Process was developed to enable the NYISO to better manage its evaluation of multiple Generator retirements happening in parallel, and to permit the NYISO to simultaneously consider and address the impact of system changes that are not directly related to Generator deactivation(s).

1. The Proposed Near-Term Reliability Need Rules Comply with the Commission's Three-Year Criterion

[26] LSP Transmission Protest at n. 45.

[27] *See NRG Power Marketing, LLC v. Federal Energy Regulatory*, 862 F.3d 108 (2017) (determining that the Commission exceeded its authority under Section 205 when its directed modifications resulted in an entirely different rate design than the proposed rate scheme).

[28] *See* 6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.

[29] In 2019, New York enacted the Climate Leadership and Community Protection Act ("CLCPA"). *See* New York State Senate bill S. 6599 and Assembly bill A. 8429, *available at*: https://legislation.nysenate.gov/pdf/bills/2019/s6599.

In its Protest, LSP Transmission argues that the NYISO has not satisfied the Commission's first criterion because it adopted what LSP Transmission repeatedly mischaracterizes as a "Four Year Time-Based ROFR." The NYISO's Commission-accepted and currently effective Generator Deactivation Process defines a Near-Term Generator Deactivation Reliability Need as a Generator Deactivation Reliability Need that will arise within three years of the conclusion of the 365 days that follow the Generator Deactivation Assessment Start Date.[30] The start date for the three-year time period reflects the fact that a Generator Deactivation Reliability Need will first arise only after a Generator is entitled to deactivate at the conclusion of the 365 day notice period. This requirement only applies to Generator Deactivation Reliability Needs and is consistent with the Commission's criterion that an immediate need reliability project "must be needed in three years or less to solve reliability criteria violations."[31] The NYISO did not propose to change this requirement in the STRP Filing.

The Commission should reject LSP Transmission's attempt to challenge the justness and reasonableness of the NYISO's currently effective tariff requirement in its Protest.[32] LSP Transmission's Protest on this point constitutes an untimely collateral attack on a provision of the NYISO's currently effective OATT. LSP Transmission attempts to make what amounts to a Section 206 complaint against the NYISO's accepted and currently effective tariff language under the guise of a Protest. The Commission has long held that complaints regarding currently effective tariffs must be filed separately from protests regarding proposed revisions to those tariffs.[33]

[30] OATT Section 38.1 (definition of "Near-Term Generator Deactivation Reliability Need").

[31] PJM 2013 Order at P 248.

[32] If the Commission were to reject the NYISO's proposed Short-Term Reliability Process tariff revisions, the NYISO's currently effective Generator Deactivation Process rules that address Near-Term Generator Deactivation Reliability Needs would remain in effect.

[33] *See e.g. California Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199, at P. 102 (Sept. 27, 2019) (holding that a complaint should not be submitted as part of a motion to protest in an ongoing proceeding because such filing

In the Short-Term Reliability Process, the NYISO has proposed changes only to establish the manner in which it determines whether Reliability Needs on the BPTFs that are ***not*** Generator Deactivation Reliability Needs will satisfy the requirements for a Near-Term Reliability Need. Specifically, the NYISO will identify these other Reliability Needs as Near-Term Reliability Needs only if they will arise within three years of the posting of the STAR in which the need is identified.[34] Given that the NYISO's proposed timeframe for the new category of Near-Term Reliability Needs fully complies with the Commission's first criterion, LSP Transmission's objection should be rejected.

2. The Commission Should Reject LSP Transmission's Demand that the NYISO Adopt PJM's Rules

The Commission should reject LSP Transmission's argument that the NYISO should be required to consider using a shortened competitive window consistent with requirements that PJM adopted for its immediate reliability need process.[35] The Commission has explained on numerous occasions that each region is permitted to develop rules to address the differing concerns of each region and are not required to have the same rules.[36] The Commission did not

does not allow interested parties sufficient notice of the complaint); *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,040 at P 18 (citing Commission precedent regarding the necessity of filing a complaint separately from a motion to intervene or protest); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992) (explaining the importance of filing a complaint separately from a motion for clarification); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (stating that complaints must be filed separately from motions to intervene and protests).

[34] Proposed revision to OATT Section 38.1 (definition of "Near-Term Reliability Need"). Unlike Generator Deactivation Reliability Needs, the other Reliability Needs on the BPTFs are not dependent on the date on which a Generator becomes eligible to deactivate.

[35] LSP Transmission Protest at 13.

[36] *See, e.g., Calpine Corporation, et al. v. PJM Interconnection, L.L.C., 169* FERC ¶ 61,239 at n. 431 (2019) ("As the Commission has previously explained, regional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts."); *see also Consolidated Edison Company of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 at P 47 (2015) ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions.")

require, nor have other regions (*e.g.*, SPP, ISO-NE) adopted, a similar shortened competitive window for their time-sensitive reliability need processes.[37]

Developing and implementing a shortened competitive window, as proposed by LSP Transmission, would provide very limited utility given the small likelihood that a competitive transmission solution, even if such solution was previously contemplated, could be solicited, proposed, selected, permitted, and built timely to meet a need identified in a three-year window. If a transmission solution were already sufficiently far along in development to be timely implemented in less than three years, it would likely have already satisfied the base case inclusion rule requirements[38] for the STAR (or Generator Deactivation Assessment, as applicable) and been included in the NYISO's analysis to determine whether a reliability need exists.

3. The Commission Should Reject LSP Transmission's Proposal to Require NYISO to Implement Interim Operating Procedures Solely to Allow Competition

The NYISO understands LSP Transmission to be requesting that the Commission require the NYISO to adopt interim operating procedures to provide sufficient time to administer a competitive transmission selection process.[39] The Commission should reject LSP Transmission's request.

The NYISO is already required when performing its existing Generator Deactivation Assessment, and will be required when performing its proposed STAR, to review whether any potential reliability need can be addressed through the adoption of alternative NYISO or

[37] *See* ISO-NE OATT, Att. K Section 4.1(j); SPP OATT Att. Y Section I.3.

[38] *See* NYISO Reliability Planning Process Manual, Manual No. 26, Section 3.2. *Available at:* https://www.nyiso.com/documents/20142/2924447/rpp_mnl.pdf/67e1c2ea-46bc-f094-0bc7-7a29f82771de

[39] LSP Transmission Protest at 13.

Transmission Owner operating procedures.[40] For the reasons explained below, the Commission should not require the NYISO to expand the use of operating procedures solely for the sake of administering a competitive solicitation of regulated transmission solutions to address a Near-Term Reliability Need.

In cases where the NYISO or Transmission Owners cannot timely implement permanent solutions to satisfy a reliability need, the NYISO or a Transmission Owner may have to rely on exceptional interim operating procedures, including non-consequential load loss, also known as load shedding.[41] It is an entirely different matter, however, to delay the implementation of a permanent solution to hold open competition for a reliability need through operating procedures that include the disconnection of non-interruptible load. The NYISO believes such actions would be contrary to the transmission planning requirements of the NERC.[42]

The planning criteria used to assess whether there are any Short Term Reliability Process Needs on the BPTFs includes NERC, NPCC, and NYSRC criteria as well as local Transmission Owner criteria. In accordance with NERC, NPCC, and NYSRC rules, should a criteria violation be observed, a corrective action plan is required.[43] This would include the requirement to only

[40] OATT Section 38.3.5.2.

[41] Non-consequential load loss involves intentionally shedding non-interruptible load. In contrast, consequential load loss occurs as a consequence of facilities being removed from service by a protection system isolating a fault.

[42] NERC TPL-001-4 Requirement 2.7 and Table 1 set forth transmission system performance requirements that prohibit the utilization of non-consequential load loss or curtailment of firm transmission service in most conditions. Requirement 2.7.3 provides a very limited exception that states, "If situations arise that are beyond the control of the Transmission Planner or Planning Coordinator that prevent the implementation of a Corrective Action Plan in the required timeframe, then the Transmission Planner or Planning Coordinator is permitted to utilize Non-Consequential Load Loss and curtailment of Firm Transmission Service to correct the situation that would normally not be permitted in Table 1, provided that the Transmission Planner or Planning Coordinator documents that they are taking actions to resolve the situation." The NYISO does not believe it is permitted to utilize non-consequential load loss or curtailment of firm transmission service if it intentionally delays implementing a Corrective Action Plan.

[43] *See, e.g.* NERC TPL-001-4 Requirement 2.7, NPCC Directory #1 Requirement R11.3 and NYSRC Reliability Rules Requirement B.2 R1.4.

utilize non-consequential load loss and curtailment of firm transmission service when situations arise that are beyond the control of the NYISO that prevent the implementation of a corrective action plan prior to the occurrence of the criteria violation, and provided that timely and reasonable actions are being taken to resolve the situation.

The NYISO is already required to consider operating procedures to address or reduce the scope of an identified reliability need before it solicits solutions.[44] The use of interim operating procedures to address reliability criteria violations should be strictly limited to necessary exceptions and limited in duration to the minimum time necessary to complete a permanent solution. LSP Transmission has not provided justification for requiring the NYISO to adopt or rely on exceptional interim operating procedures, including load shedding, to create a competitive window for transmission solutions.

4. The Commission Should Uphold Its Existing Precedent that the Need Date, Not a Solution's In-Service Date, Must Fall Within the Three-Year Period

Finally, the Commission should reject LSP Transmission's argument that the NYISO be required to only designate the Responsible Transmission Owner to address Near-Term Reliability Needs when the in-service date of the Responsible Transmission Owner's potential solution falls within the three-year time period, regardless of when the need date arises.[45]

The Commission has previously rejected requests by an LSP Transmission affiliate to modify the three-year requirement in its first criterion to reference the in-service date of a proposed solution, rather than the need date.[46] The Commission stated that the purpose behind the time-sensitive reliability need category "is to avoid delays in solving reliability violations

[44] OATT Section 38.3.5.2.

[45] LSP Transmission Protest at 13.

[46] *PJM*, 162 FERC ¶ 61,033 at P 27 (2018).

that must be addressed immediately" and found that "[t]he fact that it may take longer than three years to build a solution to an immediate reliability need is not a persuasive justification for potentially further delaying the solution."[47] LSP Transmission has not provided any justification for re-opening the Commission's prior determination, which is essential to the NYISO maintaining bulk power system reliability when faced with Near-Term Reliability Needs.

[47] *Id*.

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer, reject LSP Transmission's Protest, and accept the Tariff revisions NYISO proposed in the above-referenced docket without modification.

Respectfully submitted,

By: */s/ Alex M. Schnell*

Alex M. Schnell, Assistant General Counsel/
Registered Corporate Counsel
Carl F. Patka, Assistant General Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
aschnell@nyiso.com
cpatka@nyiso.com

Michael Messonnier
Counsel to the New York Independent System Operator
Hunton Andrews Kurth LLP
mmessonnier@huntonak.com

April 3, 2020

cc: Anna Cochrane
Jignasa Gadani
Jette Gebhart
Kurt Longo
John C. Miller
David Morenoff
Daniel Nowak
Larry Parkinson
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will