

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

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| Hecate Energy Greene County 3 LLC |) | |
| |) | |
| v. |) | Docket No. EL21-49-000 |
| |) | |
| Central Hudson Gas & Electric Corporation |) | |
| New York Independent System Operator, Inc. |) | |

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
THE 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 29, 2021, *Motion to Answer and Answer* of Hecate Energy Greene County 3, LLC (“Complainant”) concerning the February 11, 2021 Complaint (“Complaint”) filed against the NYISO and Central Hudson Gas & Electric Corporation (“Central Hudson”) in the above-captioned docket.² As described in Part II below, the Commission should reject the Complainant’s *Motion to Answer and Answer* (“Complainant’s Answer”). The NYISO also renews its request that the Commission deny the Complaint because Complainant continues to fail to meet its burden of proof under Sections 206 and 306 of the Federal Power Act (“FPA”).³

¹ 18 C.F.R. § 385.213 (2019).

² Capitalized terms not defined in this Answer shall have the meaning set forth in Section 31.1.1 of Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”) or in Section 1 of the OATT.

³ Consistent with Commission precedent, the NYISO has limited its response to those issues for which it believes that providing additional information will best assist the Commission’s decision-making process. The NYISO’s silence with respect to any particular argument or assertion raised by the Complainant’s Answer should not be construed as acceptance or agreement.

I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to, and routinely accepts, answers to answers 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.⁴ This Answer satisfies those standards and should be accepted because it addresses inaccurate and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding. Consequently, in the event that the Commission accepts Complainant's Answer, the NYISO respectfully requests that it also accept this Answer.

II. ANSWER

Complainant's Answer mainly repackages and rehashes the same points found in its Complaint and comprehensively addressed in the NYISO's March 15, 2021 Answer ("March 15 Answer").⁵ It also seeks to introduce a few new arguments, including a baseless assertion that the NYISO is not independent and manages its interconnection processes to shift the costs of System Upgrade Facilities to generation projects that plan on serving out-of-state consumers.⁶ Nothing in Complainant's Answer has any merit or brings Complainant any closer to satisfying its statutory burden of proof. The Commission should, therefore, reject the Complainant's Answer because it does nothing to clarify the record or assist the Commission's decision-making. The Commission should also deny the Complaint for the reasons set forth in the March 15 Answer as Complainant has not met its burden of proof under Section 206 and 306 of the FPA and the Commission's Rules of Practice and Procedure.

⁴ *Entergy Serv., Inc.*, 152 FERC ¶ 61,133 at P 37 (2015) (accepting answers to answers in order to provide "information that will assist [the Commission] in [the] decision-making process"); *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,104 at P 27 (2015) (accepting answers filed in response to answers).

⁵ *Hecate Energy Greene County 3 LLC v. Central Hudson Gas & Elec. Corp., et al.*, Answer to Complaint of New York Independent System Operator, Inc., Docket No. EL21-49-000 (March 15, 2021) ("March 15 Answer").

⁶ See Complainant's Answer at pp 23-24.

As demonstrated in the March 15 Answer, the NYISO acted appropriately in processing Complainant's Interconnection Request for the Greene County 3 solar generation project ("Project") in the NYISO's Small Generator Interconnection Procedures ("SGIP"). As the NYISO explained, while there were points in the study process for the Project where it took longer than it has taken to complete certain tasks for more typical interconnection requests, the time required to study the Project in the system impact study and in processing the facilities study agreement was reasonable given the complex circumstances surrounding the proposed interconnection of the Project. Complainant's Answer once again ignores or downplays these highly relevant circumstances and instead focuses solely on the overall length of the process. Accepting Complainant's position would effectively nullify the Reasonable Efforts standard set forth in the NYISO's Open Access Transmission Tariff ("OATT"), as well as the necessary flexibility afforded transmission providers in studying complex and interdependent interconnection requests.⁷

As further demonstrated in the March 15 Answer, the NYISO appropriately administered its OATT in establishing the base case rules for the facilities study for the Project. Section 25.5.5.1(vii) of Attachment S to the NYISO OATT explicitly permits Transmission Owners to provide system updates to be incorporated during the development of the base case. In this instance, the NYISO properly received the inputs in developing the applicable base cases for its studies based on Central Hudson's determination that such facilities reached a sufficient level of development to be included in its distribution system representation. The Complaint in essence

⁷ In Order No. 845, as part of its investigating and implementing the requirement to report interconnection study processing metrics in the *pro forma* Large Generator Interconnection Procedures, the Commission retained the Reasonable Efforts standard and rejected a proposal to implement automatic penalties for delayed studies to provide flexibility for complex interconnection requests. The Commission "recogniz[ed] that often a delay will not be the result of the transmission provider having acted inappropriately." *See Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at PP 44, 309 (2018).

seeks to modify the NYISO OATT to establish different rules for the manner in which the existing system representation is reflected in interconnection study base cases. The argument that the NYISO applied a rule that is not within the NYISO's tariff is without merit.⁸

The NYISO addresses the two new arguments found in Complainant's Answer in Sections II.A and B below.

A. The NYISO is Independent and Does Not Favor a Particular Subset of Generators in its Interconnection Processes

Complainant alleges without any evidence that the NYISO is not independent and manages its interconnection processes to shift the costs of System Upgrade Facilities to generation projects that plan on serving out-of-state consumers.⁹ There is no basis for Complainant to make such a claim. The Commission has recently reiterated that "rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims."¹⁰

In support of its claim that the NYISO failed to use Reasonable Efforts in processing the Project, Complainant focuses on the provision in the Reasonable Efforts definition requiring a party to use "efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests."¹¹ In response to the NYISO's explanation of its independence from generators proposing to interconnect, Complainant asserts that "[t]he independence that is relevant here is independence of regulatory and policy personnel of NYISO from state regulators and other state officials" and alleges that

⁸ See *Light Power & Gas of NY LLC*, 169 FERC ¶ 61,216 at P 12 (2019).

⁹ See Complainant's Answer at pp 23-24.

¹⁰ *Californians for Green Nuclear Power, Inc. v. Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,203 at P 49 (2021) (citing *Illinois Mun. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084 at 61,482 [1996]).

¹¹ OATT § 30.1.

the NYISO lacks the independence based on the initiatives of the State of New York.¹²

Complainant then references a nearly twenty-year-old, vacated order related to the independence of the Board of the California Independent System Operator as it existed at that time. Such references are entirely irrelevant to the NYISO.¹³ The NYISO is an independent, not-for-profit company that is not an instrumentality of the State of New York. In addition, the NYISO's Board of Directors is not appointed by or answerable to the State of New York. While the NYISO coordinates and collaborates, where appropriate, with the State of New York, the NYISO does so in a manner consistent with the independence requirements established by the Commission.¹⁴ Complainant has offered nothing but "bald allegations" regarding the NYISO's independence.

Additionally, Complainant fails to provide support for its allegations that the NYISO conducted the SGIP for the Project differently based upon Complainant's business plan. The NYISO's interconnection studies do not account for the business plan of generating facilities proposing to interconnect in its process. The NYISO makes no inquiries regarding developer's

¹² See Complainant's Answer at pp 23-24.

¹³ Cf. *Mirant Delta, LLC v. CAISO*, 100 FERC ¶ 61,059 at P 19 (2002) (finding that the early governance structure of the California Independent System Operator ["CAISO"] is inherently non-independent because of the California's control over CAISO and its role in selecting CAISO's board members), *reh'g granted in part and denied in part*, 100 FERC ¶ 61,271, *reh'g denied*, 101 FERC ¶ 61,078, *vacated and remanded*, *California Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 404 (D.C. Cir. 2004); see also *California Indep. Sys. Operator Corp., et al.*, 112 FERC 61,010 at PP 18, 30-36 (2005) (finding that "whether or not the Governor [of California] chose the present Board members, standing alone, is not dispositive of whether or not the current Board is independent" and that the proposed board selection process that includes, among other things, an independent search firm for board members is acceptable for the purposes of the independent requirements under Order No. 888 and Order No. 2000).

¹⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 75 FERC ¶ 61,080 at 61,238 (1996) (establishing requirements to ensure the independence of independent system operators from any individual or class of market participants), *order on reh'g*, Order No. 888-A, 78 FERC ¶ 61,110, *order on reh'g*, Order No. 888-B, 78 FERC 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC 61,046 (1998), *aff'd in relevant part sub nom., Transmission Access Policy Study Group v. FERC*, 225 F.3d 673 (D.C. Cir. 2000), *aff'd sub nom., New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002); see also *Central Hudson Gas & Elec. Co., et al.*, 83 FERC ¶ 61,352 (1998) (accepting the proposal for establishing the NYISO Board of Directors, including, but not limited to, the requirement that such board members not have any affiliation with any market participant and the process for selecting board members), *order on reh'g*, 87 FERC ¶ 61,135 (1999), *order on reh'g*, 88 FERC ¶ 61,229.

business plans in the interconnection process and would be in no position to independently confirm any responses. Importantly, Complainant has not pointed to any evidence for its baseless accusation of discriminatory treatment by the NYISO. As explained in the March 15 Answer, the NYISO was advised of the specific projects that were processed through the New York State Standardized Interconnection Requirements and Application Process (“NYSSIR”) at issue here during the scoping meeting of the facilities study for Complainant’s Project and its affiliates’ projects, which occurred following the performance of the system impact study and the execution of the facilities study agreement.¹⁵ The timing is simply inconsistent with Complainant’s claim that the NYISO had a motive to impose major costs of upgrades on its Project to shift such costs to out of state.

Complainant’s argument is further undermined by the NYISO’s and Central Hudson’s extensive work to mitigate the need for non-Local System Upgrade Facilities for the Project and its two affiliated projects as part of the system impact study and the efforts undertaken to provide for only limited local upgrades for the two similarly situated, affiliated projects in the facilities study process.¹⁶ If the NYISO truly harbored a bias against out-of-state projects, it would have had no reason to make these efforts.

¹⁵ As detailed in its March 15 Answer, Central Hudson provided updates to its system at and following the July 30, 2019 “kick off” meeting with Complainant and Central Hudson. See March 15 Answer at Attachment 2, PP 15-18. This timeframe is after the period of time that the Complaint alleges that the NYISO failed to use Reasonable Efforts. See Complaint at pp 22-23 (claiming that the execution of the facilities study agreement was complete no later than July 16, 2019).

¹⁶ See *Application of Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, and Hecate Greene County 3 LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law*, Application of Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, and Hecate Energy Greene 3 LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Coxsackie, Greene County, PSC Case No. 17-F-0619 (October 13, 2017), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A2D480EE-9D7A-47BD-84FC-0A7CB1E000E4}>.

B. Complainant Conflates the NYISO's Interconnection Processes with the NYSSIR Process and Fails to Recognize Important Differences

The NYISO's interconnection processes are separate and different from the NYSSIR process and cannot be compared on an apples-to-apples basis. Complainant's continued attempt to intertwine the processes and muddle the distinctions between them is, at best, disingenuous and misleading.

The NYISO is not a participant of the NYSSIR process. However, the NYISO's understanding of the NYSSIR is that the scope of those studies (*i.e.*, 5 MW or less generating facilities interconnecting primarily to distribution facilities) and the level of modeling are very different from the SGIP. Therefore, comparing the processing of the projects seeking to interconnect to Central Hudson's distribution system via the NYSSIR process and the processing of Complainant's Project (and the affiliated projects) in the SGIP does not provide the Commission with an accurate picture of the efforts required by the NYISO and Central Hudson to study the projects in the SGIP to ensure their reliable interconnection to the New York State Transmission System.

For example, the NYISO's process and the NYSSIR employ different criteria and standards in evaluating projects, as well as have different focuses. In the NYISO's process, the study models contain nearly the whole Eastern Interconnect, and the studies look broadly at the impact of a proposed interconnection on the transmission system and distribution system, as applicable. In contrast, the NYISO's understanding is that the level of modeling in the NYSSIR process is largely focused on a distribution feeder(s) and a specific number of buses. Naturally, the processes also use different software and programs with different scopes and are not performed in the same way.

The NYISO's process also applies criteria from the North American Electric Reliability Corporation ("NERC"), Northeast Power Coordinating Council, Inc. ("NPCC"), New York State Reliability Council ("NYSRC"), and the Connecting Transmission Owner(s) and/or Affected System Owner(s). In cases like Complainant's Project, the NYISO's process also includes distribution criteria. The NYISO's understanding is that the NYSSIR generally applies the distribution criteria specific to the Transmission Owner's distribution system and not the wider, more extensive criteria applied in the NYISO's studies.

In short, Complainant's attempt to minimize the efforts expended by the NYISO in processing the Project in the SGIP by comparing it to a completely different process is misleading and does nothing to support Complainant's claim.

III. CONCLUSION

For the reasons set forth above, the Complainant's Answer should be rejected. For the reasons set forth in the March 15 Answer, the underlying Complaint should be denied in its entirety. The Commission should take no further action and should not initiate any further proceedings.

Respectfully Submitted,

/s/ Brian R. Hodgdon

Sara B. Keegan, Senior Attorney
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New York Independent System Operator, Inc.

April 13, 2021

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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 13th day of April, 2021.

/s/ Mohsana Akter

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