

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

Athens Energy Storage LLC

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Docket No. ER23-916-000

**MOTION TO DISMISS RESPONSE AND, ALTERNATIVELY,
REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this motion for the Commission to dismiss the *Motion for Leave to Respond and Response of Athens Energy Storage LLC* (“Response”) submitted by Athens Energy Storage LLC (“Athens”) on February 3, 2023.² Alternatively, if the Commission were to accept the Response, the NYISO respectfully submits this request for leave to answer and answer (“Answer”) to enable the NYISO to correct misstatements by Athens in the Response concerning the rules of the NYISO’s Class Year Interconnection Facilities Study (“Class Year Study”).³ The NYISO also renews its request that the Commission not grant Athens’ requested waiver in this proceeding.⁴

I. Motion to Dismiss Athens’ Response

The Commission should dismiss Athens’ Response. Answers to protests are not permitted as a matter of right.⁵ The Commission only accepts such answers when they help to clarify complex issues, provide additional information that will assist the Commission, or are otherwise helpful in the

¹ 18 C.F.R. §§ 385.212, 385.213 (2022).

² *Athens Energy Storage LLC*, Motion of Leave to Respond and Response of Athens Energy Storage LLC, Docket No. ER23-916-000 (Feb. 3, 2023) (“Response”).

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 Athens’ Response should not be construed as acceptance or agreement.

⁴ See *Athens Energy Storage LLC*, Motion to Intervene and Protest of the New York Independent System Operator, Inc., Docket No. ER23-916-000 (Jan. 27, 2023) (“NYISO Protest”).

⁵ 18 C.F.R. § 385.213(a)(2) (2022).

development of the record in a proceeding.⁶ In this instance, Athens' Response largely repackages and rehashes the same arguments included in its waiver request in this proceeding and addressed in the NYISO's January 27, 2023, protest.⁷ The Response does not provide additional clarity or otherwise develop the record in this proceeding and should be rejected.⁸

II. Motion for Leave to Answer and Answer

If the Commission were to accept Athens' Response, simple fairness requires that the Commission accept this Answer to correct the record in this proceeding. 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.⁹ This Answer satisfies those standards and should be accepted because it addresses inaccurate and misleading statements concerning the NYISO's Class Year Study rules.

The NYISO renews its opposition to the Commission granting Athens' requested waiver, which would essentially eliminate the Class Year entry tariff requirement for Athens' project and could result in delays in the Class Year Study that harm other Developers. Athens' arguments that the NYISO acted in a discriminatory manner with regard to Athens' project are without merit. As detailed in the NYISO's protest, there is no basis for Athens' assertion, and Athens does not provide grounds for this assertion in its Response. Moreover, Athens fails to acknowledge the simple fact that the Clean Path project, and all other projects with waiver requests the NYISO has supported, all

⁶ See, e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting NYISO answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record . . .")

⁷ See fn. 4 above.

⁸ See *Athens Energy Storage LLC*, Request of Athens Energy Storage LLC for Prospective Tariff Waiver, Shortened Comment Period, and Expedited Action, Docket No. ER23-916-000 (Jan. 20, 2023).

⁹ See *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).

submitted Interconnection Requests before Athens' project and are, therefore, unsurprisingly further along in their interconnection studies.

In its Response, Athens supplements its arguments that its requested waiver will not harm third parties by asserting that other Class Year 2023 projects will likely benefit from the inclusion of its project in the Class Year.¹⁰ In particular, Athens asserts that its project is unlikely to require network upgrades, but that Athens' inclusion in the Class Year Study will benefit other Class Year Projects¹¹ by Athens paying "a share of the costs incurred to interconnect other projects."¹²

Athens' assertion reflects a fundamental misunderstanding of the NYISO's Class Year Study rules as set forth in Attachment S of the NYISO's Open Access Transmission Tariff ("OATT").¹³ The Class Year Study allocates the costs of any System Upgrade Facility ("SUF") required to reliably interconnect a Class Year Project or Class Year Projects to the specific project(s) that caused the need for that upgrade based on each project's individual contribution to that need.¹⁴ If a Class Year Project's interconnection does not contribute to the need for a particular SUF, that Class Year Project is not allocated any of the costs of that upgrade. Accordingly, Athens' inclusion in Class Year 2023 would not result in the allocation to Athens of the costs of any upgrades that are identified

¹⁰ Response at 9-10.

¹¹ Capitalized terms that are not otherwise defined in these comments shall have the meaning specified in Attachments S or X to the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Market Administration and Control Area Services Tariff.

¹² Response at 10.

¹³ Athens cites to Section 25.7.1.1 of Attachment S of the NYISO OATT in support of its assertion that it will pay a share of the costs to interconnect other projects. This provision, however, does not address the requirements for allocating the costs of the upgrades required to reliably interconnect the Class Year 2023 projects, but instead addresses the NYISO's rules for allocating the costs of any System Deliverability Upgrades ("SDUs") required for projects to qualify for Capacity Resource Interconnection Service. In addition, this provision explicitly ties each project's individual cost responsibility to the project's contribution to the need for the SDU and does not allocate such costs broadly to all Class Year participants. In particular, "Each Project in a Class Year Deliverability Study ("Class Year CRIS Project") will share in the then currently available deliverability capability of the New York State Transmission System, and will also share in the cost of any System Deliverability Upgrades *required for its Project* to qualify for CRIS at the requested level. The total cost of the System Deliverability Upgrades required for all the Projects in the Class Year will be allocated among the Projects in the Class Year *based on the pro rata impact of each Class Year CRIS Project on the deliverability of the New York State Transmission System, that is, the pro rata contribution of each Project in the Class Year Deliverability Study to the total cost of each of the System Deliverability Upgrades identified in the Class Year Deliverability Study.*" (emphasis added)

¹⁴ See OATT, Attach. S, Sections 25.4.1, 25.6.2.7, Appendix 1.

in the Class Year Study solely for other projects and, therefore, would not benefit other Class Year Projects in the manner indicated in the Response.

III. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission dismiss Athens' Response or, alternatively accept this Answer and that the Commission deny Athens' requested waiver in this proceeding.

Respectfully submitted,

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Date: February 8, 2023

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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 8th day of February 2023.

/s/ Elizabeth Rilling

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