

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

<b>Improvements to Generator</b>	)	
<b>Interconnection Procedures</b>	)	<b>Docket No. RM22-14-001</b>
<b>and Agreements</b>	)	

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

In accordance with Section 313(a) of the Federal Power Act (“FPA”)<sup>1</sup> and Rule 713 of the Commission’s Rules of Practice and Procedure,<sup>2</sup> the New York Independent System Operator, Inc. (“NYISO”) requests rehearing and clarification of certain determinations made in the Commission’s final rule in this proceeding (“Order No. 2023”).<sup>3</sup>

The NYISO strongly supports and shares Order No. 2023’s goals of ensuring “that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner,” preventing undue discrimination, reducing interconnection queue backlogs, and providing greater certainty during the interconnection process.<sup>4</sup> The NYISO believes that many of the Commission’s requirements in Order No. 2023 will drive efficiencies and improvements in interconnection procedures in support of these goals and, in fact, the NYISO has previously adopted a number of the key Order No. 2023 reforms in its interconnection process.<sup>5</sup>

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<sup>1</sup> 16 U.S.C. § 8251(a).

<sup>2</sup> 18 C.F.R. § 385.713 (2023).

<sup>3</sup> *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (2023).

<sup>4</sup> Order No. 2023 at PP 1, 48.

<sup>5</sup> For example, the NYISO already uses a first-ready, first served approach for managing projects in its interconnection queue and uses a cluster Class Year Study as the final, hallmark study in its LFIP. *See Improvements to Generator Interconnection Procs. & Agreements*, Comments of the New York Independent System Operator, Inc., Docket No. RM22-14-000 at Appendix A (Oct. 14, 2022). (“NYISO Initial Comments”).

The NYISO has demonstrated a continuous improvement mindset to develop and implement enhancements to its interconnection process, so that it can more effectively realize these shared goals. The NYISO's reforms over recent years have resulted in substantial process improvements, but the NYISO agrees that additional improvements are necessary to accommodate the historic transition that is underway on the electric grid. For this reason, the NYISO initiated with its stakeholders in late 2022 a comprehensive interconnection queue reform initiative.<sup>6</sup> This initiative is currently ongoing, and the NYISO expects that its reforms under development will be improved by many of the process enhancements adopted in Order No. 2023.

However, some of Order No. 2023's directives are inconsistent with binding legal requirements and have the potential to undermine the Commission's policy objectives. The Commission should grant rehearing or clarification on these points to improve Order No. 2023 and to keep the focus on collaborative efforts to improve interconnection procedures, including the NYISO's. Specifically, as described in more detail below, the Commission should:

- Grant rehearing to permit each transmission provider to establish firm interconnection study deadlines that are reasonable and realistic in light of the study scopes and circumstances in each region instead of one-sized-fits-all timeframes;
- Grant rehearing to reverse the Order No. 2023 determination to apply its strict liability penalty regime to the NYISO and similarly situated regional transmission organizations ("RTOs") and independent system operators ("ISOs") that have no ability to recover penalty costs except using funds that come from customers;<sup>7</sup>
- Clarify, if it retains the application of study penalties for RTOs/ISOs that: (i) RTO/ISOs may recover penalty costs from consumers through non-transmission related charges without first seeking the Commission's permission in accordance with Paragraph 998 of

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<sup>6</sup> See *Improvements to Generator Interconnection Procs. & Agreements*, Reply Comments of the New York Independent System Operator, Inc., Docket No. RM22-14-000 at 2 (Dec. 14, 2022) ("NYISO Reply Comments").

<sup>7</sup> Capitalized terms that are not defined herein shall have the meaning set forth in Order No. 2023 or, if the terms concern the NYISO's interconnection procedures, the meaning set forth in Attachments S or X to the NYISO Open Access Transmission Tariff ("OATT").

Order No. 2023, (ii) penalty waivers that satisfy the Commission’s traditional four-prong assessment may be used in cases in which it is difficult to identify the parties to blame for missed study deadlines, and (iii) RTOs/ISOs may include default structure proposals for recovering penalty costs with their Order No. 2023 compliance filings;

- Clarify that an interconnection customer only gets one opportunity to correct deficiencies in its interconnection request;
- Grant rehearing to eliminate the requirement that the transmission provider anonymize the list of developers participating in a cluster, which would result in the unequal disclosure of such information that is at odds with transparency and an additional administrative burden on the transmission provider;
- Grant rehearing to eliminate the overly-complicated approach for distributing withdrawal penalties and to instead permit each transmission provider to determine how collected penalty amounts can best be put to use in its region;
- Grant rehearing to eliminate the withdrawal penalty materiality threshold that does not align with the objectives of Order No. 2023 and creates a significant administrative burden on the transmission provider;
- Clarify that the required withdrawal penalties cannot exceed the amount secured by the transmission provider and provide certain other clarifications concerning the implementation of the withdrawal penalty mechanism; and
- Grant rehearing to remove the requirement that the transmission provider must, at an interconnection customer’s request, use operating assumptions for proposed charging behavior of an electric storage resource, which creates conflicts with market rules and adds additional complexity to interconnection studies at odds with the intent of Order No. 2023 to expedite these studies.

## **I. COMMUNICATIONS**

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## II. REQUEST FOR REHEARING AND CLARIFICATION

### A. The Fixed, One-Size-Fits-All Timeframe for the Cluster Study Is Arbitrary and Capricious

In Order No. 2023, the Commission adopted a 150-calendar day time period for a transmission provider to perform a Cluster Study. The NYISO is committed to establishing an interconnection study process with predictable study timeframes and agrees that establishing deadlines is an important step. However, as detailed below, the specific time period established in the order is arbitrary and capricious, does not reflect reasoned decision-making, and is not based on substantial evidence. While the NYISO anticipates that it will seek an independent entity variation from this study timeframe to better align with the study scope it will propose for the unique interconnection issues in New York, the Commission should modify the underlying *pro forma* 150-day study period applicable to the Cluster Study performed by every transmission provider, as this study period is an unreasonable limitation on the time required for performing the system impact study evaluations, including necessary reliability analyses.

The NYISO has focused on the 150-calender day timeframe for the Cluster Study here as that study represents the most significant new process step proposed in Order No. 2023.

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<sup>8</sup> Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2023)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

However, the timeframes for the Cluster Re-Study and Interconnection Facilities Study are also arbitrary and capricious and deficient for the same reasons explained in this section for the Cluster Study.<sup>9</sup>

*i. The Commission Has Not Established a Basis for a 150-Day Study Timeframe for the Cluster Study*

The Commission has not provided any basis for the 150-day timeframe for the Cluster Study, nor has it established in the record the actual time reasonably required to perform this study, including how such timeframe may be impacted by the complexity of proposed interconnections or the number of participants in a cluster. Notwithstanding these concerns, the Commission proposes to use this firm deadline as the baseline for applying significant penalties on transmission providers.

The NYISO supports establishing deadlines in the interconnection study processes, but requests that such deadlines be tailored to the specific scope and requirements of reliability evaluations required in each region. In particular, the NYISO requests that the Commission modify Section 7.4 of its *pro forma* Large Generator Interconnection Procedures (“Pro Forma LGIP”) to replace the 150-day study deadline with a placeholder for each transmission provider to insert a study deadline for performing the Cluster Study, which timeframe the transmission provider must justify in its compliance filing in light of the specific study scope and circumstances of its region.

Order No. 2023 establishes a new Cluster Study in place of the current, serial system impact study. The Cluster Study includes the same interconnection studies that the

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<sup>9</sup> While the Commission has not directed a change to the number of days for the performance of the Interconnection Facilities Study in Order No. 2023, it has changed the study timeframe from one subject to Reasonable Efforts to a firm deadline subject to penalty. This amounts to a change in the study timeframe, and the Commission has not provided a basis for the existing number of days as a reasonable and realistic firm timeframe for the Interconnection Facilities Study.

Commission’s Pro Forma LGIP currently requires for the serial impact study (*i.e.*, stability analysis, power flow analysis, and short circuit analysis) but on a clustered basis.<sup>10</sup> The revised Pro Forma LGIP establishes a firm 150-calendar day study timeframe for this study.<sup>11</sup> The 150 days include the time required to develop system models and base case data for the Cluster Study.<sup>12</sup>

The Commission did not establish in Order No. 2023 any basis for a 150-day study period for the Cluster Study. Instead, the Commission included an assertion that this timeframe for performing the stability analyses, power flow analyses, and short circuit analyses was “based on the record” without providing any detail as to what in the record supports the conclusion that 150 days is a reasonable period of time.<sup>13</sup> To the extent the Commission’s summary of comments in the order constitutes the record, the Commission cites to a limited number of parties in support of a 150-day period, none of which appear to be entities that perform such study work.<sup>14</sup>

ii. *A 150-Day Study Period Is Not Consistent with the System Impact Study Evaluations that Transmission Providers Must Perform for Proposed Projects*

The Commission’s conclusion concerning the reasonableness of the 150-day deadline does not align with the necessary system impact study evaluations that a transmission provider must perform for proposed projects, including the evaluations required to address applicable reliability requirements in New York. As detailed in the attached affidavit of Thinh Nguyen, Sr. Manager, Interconnection Projects for the NYISO (“Nguyen Affidavit”), the system impact

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7.3. <sup>10</sup> Order No. 2023 at P 317; Order No. 2023, Appendix C: Pro Forma LGIP (“Revised Pro Forma LGIP”) at 7.3.

<sup>11</sup> Order No. 2023 at P 324; Revised Pro Forma LGIP at 7.4.

<sup>12</sup> Order No. 2023 at PP 324, 328; Revised Pro Forma LGIP at 7.4.

<sup>13</sup> Order No. 2023 at P 324.

<sup>14</sup> *Id.* at P 305.

study encompasses numerous necessary steps that are critical to evaluating the potential reliability impacts of generation proposing to connect to the New York State Transmission System.<sup>15</sup> These necessary steps must be fully executed to avoid compromising the NYISO's obligations to fully evaluate a proposed interconnection under all Applicable Reliability Requirements.

In New York, Applicable Reliability Requirements include Northeast Power Coordinating Council ("NPCC") rules and New York State Reliability Council ("NYSRC") rules, which are often more stringent than North American Electric Reliability Corporation ("NERC") rules.<sup>16</sup> These stringent criteria are driven by, among other things, the unique complexities of the transmission system in New York City and Long Island, with their condensed geographic footprint and high population density. This existing complexity is being further challenged by the influx of significant offshore wind generation. For example, the New York State Energy

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<sup>15</sup>See Nguyen Affidavit at P 14. The Commission generally does not accept new evidence presented on rehearing but may do so if a party makes a "compelling showing of good cause." *See, e.g., Middletown Coke Co.*, 182 FERC 61,231 at P 10 (2023). The NYISO does not believe that the Nguyen Affidavit constitutes "new evidence" because it describes "the steps that the NYISO must perform for a system impact study and facilities study and the timeframe for performing such work." Nguyen Affidavit at P 1. That is, the Nguyen Affidavit provides clarifying details regarding publicly available information about the NYISO's Commission-approved interconnection procedures that the NYISO has already described in this proceeding. *See* NYISO Initial Comments at Appendix A. This is not "new" information. To the extent that the Commission nevertheless deems the Nguyen Affidavit to be "new evidence" it should accept it because the NYISO could not have reasonably anticipated that Order No. 2023 would be based, in part, on factual misunderstandings regarding the interconnection study process, the potential benefits of interconnection studies, and the level of collaboration required to complete studies in New York. This includes, but is not limited to, Order No. 2023's inaccurate assumption that transmission owners conduct certain studies without collaborating with the NYISO (which is discussed further below. *See, e.g., Pub. Ser. Co. of N.M.*, 181 FERC ¶ 61,013, at P 12 and n.25 (2022) (Describing exception to practice of rejecting new evidence on rehearing if an "argument could not have been previously presented, *e.g.*, claims based on information that only recently became available or concerns prompted by a change in material circumstances."))

<sup>16</sup> NPCC requires more stringent operating, planning and protection criteria to enhance the reliability of the interconnected bulk power system in Northeastern North America; NYSRC does the same for New York State. NPCC and NYSRC criteria address and mitigate operational and planning risks unique to the Northeast and New York, which may be more stringent than, or address matters absent from, NERC Standards. For example, NERC only requires the bulk system be planned to manage the loss of a single element following the loss of a prior single element. (*See* NERC TPL-001-4, P3 and P6). NPCC and NYSRC, however, require the bulk system be planned to manage the loss of a single element or multiple elements following the loss of a prior single element. (*See* NPCC Regional Reliability Reference Directory # 1, Design and Operation of the Bulk Power System, Category II Event and NYSRC Reliability Rules & Compliance Manual, Category II Event).

Research and Development Authority (“NYSERDA”) has awarded several offshore wind projects with Offshore Wind Renewable Energy Certificates (“ORECs”), which account for over 4,000 MWs of offshore wind projected to be injected in downstate New York.<sup>17</sup> NYSERDA is set to announce another round of offshore wind awards in the coming months, which will further add to the complexities in New York City’s power system.

Broadly speaking, the timeframe for conducting the system impact study is driven by the study scope (*e.g.*, whether the study addresses physical feasibility), the number of impacted parties (*e.g.*, Connecting Transmission Owners (“CTO(s)”), Affected Transmission Owners, and other Affected Systems), the complexity of the project, and unique challenges at the project’s Point of Interconnection (“POI”).<sup>18</sup> Further, for a system impact study to effectively evaluate a proposed interconnection, the transmission provider requires accurate modeling data from an interconnection customer; study cases built for the proposed project; and precise thermal, voltage, steady state, and short circuit analyses. As detailed in the Nguyen Affidavit, this requires:

- Collaboration with the CTOs to build applicable study base cases, and the associated auxiliary study files (*e.g.*, monitoring files, contingency files, sub-system files for steady-state analysis and stability contingency files) for proposed projects to conduct the required analyses to meet all applicable reliability standards of the NERC, NPCC, NYSRC, and CTOs.
  - Depending on where the proposed POI is located, short circuit base cases may also be required prior to the commencement of a study to determine the

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<sup>17</sup> To date, NYSERDA has executed OREC contracts with Sunrise Wind (924 MW), Empire Wind 1 (816 MW), Empire Wind 2 (1,260 MW) and Beacon Wind (1,230 MW) (<https://www.nyserdanyny.gov/All-Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects>).

<sup>18</sup> See Nguyen Affidavit at P 7-15.



configuration of the POI to meet the CTO's planning design criteria. This information is required for the CTO to determine whether a proposed project needs to connect via a direct-tap to a transmission line or via the construction of a new three-breaker ring bus.

- For such cases, building the short circuit base cases results in front-loading work prior to the design of the conceptual breaker one-line diagram and the physical construction feasibility assessment of the proposed projects, which adds time to the overall process.
- This effort could take several weeks to several months depending on the number of proposed projects that require this special attention for building, reviewing, and finalizing pre-and post-project short circuit base cases.
- Collaboration with the CTOs to build the pre-and post-project steady-state base cases that represent various system conditions (*e.g.*, summer peak load, winter peak load, and spring light load conditions).
  - These base cases will serve as the starting place for the NYISO and/or the CTO to conduct: (a) the bus flow analysis to determine whether or not proposed projects would require rebuilding some portion of, or an entire, substation and (b) the steady-state analysis to ensure proposed projects meet all applicable NERC, NPCC, NYSRC, and local transmission owner planning design criteria (*e.g.*, N-0, N-1, N-1-1 and, if applicable, N-1-1-0).
  - This effort could also take several months depending on the number of projects and where the projects propose to be located, which could result in building various sets of base cases to capture the impacts of proposed projects.

- Collaboration with the applicable CTOs and/or the interconnection customers to determine upgrade solutions and select upgrades that constitute the least cost solution to mitigate reliability violations consistent with Good Utility Practice and all applicable reliability requirements.
  - This process could also result in an iterative process where all applicable reliability analyses would need to be re-performed to ensure that, with the selected upgrades, the proposed projects can be reliably interconnected to the system.
- Performance of additional reliability evaluations.
  - The NYISO must also conduct the stability analysis, transfer analysis, deliverability analysis, short circuit analysis, NPCC/NYSRC bulk power system transmission facility testing analysis, sub-synchronous torsional interaction screening analysis, and additional analyses.
  - The study effort level for each of these analyses is also extensive and time consuming, similar to the effort to conduct the steady-state analysis.<sup>19</sup>

The results of these evaluations then must be summarized and shared for comment with each of the impacted parties – interconnection customers, CTOs, and Affected Systems – and are subject to review by the NYISO stakeholder Transmission Planning Advisory Subcommittee and ultimate review and approval by the NYISO stakeholder Operating Committee.<sup>20</sup> Stakeholder engagement is a key tenet of the NYISO’s interconnection process, providing stakeholders with

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<sup>19</sup> See Nguyen Affidavit at P 14.

<sup>20</sup> NYISO OATT Attach. X Section 30.7.5. The Operating Committee is the standing stakeholder committee created by the NYISO’s Independent System Operator Agreement that is responsible for, among other things, ensuring that all NYISO rules, procedures, and practices are consistent with the NYSRC reliability rules and oversight and coordination of operating and performance studies. (NYISO Operating Committee By-laws, Sections 9.01.3 and 9.01.4).

transparency and the opportunity to review the results of critical reliability-based evaluations. If forced to complete the study process within a timeline that does not fully account for these important actions, the NYISO would likely have to eliminate this valuable review and approval process.<sup>21</sup>

Recognizing the need to tighten the study timelines, the NYISO has challenged itself to drive efficiencies in the study process. The NYISO recently narrowed the scope of its System Reliability Impact Study (“SRIS”) to the minimum required without limiting analyses critical to evaluating reliability impacts of proposed interconnections.<sup>22</sup> The NYISO is committed to meeting the most aggressive schedule possible tailored to New York’s unique needs and critical reliability evaluations. Physical feasibility issues are particularly important in New York, with its tightly condensed transmission network. As explained above, the geographic challenges are particularly acute in New York City and on Long Island, with numerous projects seeking to interconnect to a limited number of potential points of interconnection within one of the most complex electrical systems and densely populated areas in the country. The NYISO needs to address early in the interconnection study process which proposed projects will be eligible to make use of those limited points of interconnection.

The Commission’s determination to eliminate the feasibility study and replace it with a heatmap to provide project developers with a rough indication of interconnection capacity before they submit their interconnection requests will not address critical physical feasibility issues.<sup>23</sup> Rather, feasibility analyses will need either to be included in the Cluster Study or otherwise addressed early in the interconnection process. These process steps will be addressed in the

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<sup>21</sup> See Nguyen Affidavit at P 21.

<sup>22</sup> *Id.* at P 15.

<sup>23</sup> Order No. 2023 at P 297.

NYISO's compliance filing.<sup>24</sup> To the extent that feasibility analysis is included in the Cluster Study, this analysis will require additional time that has not been accounted for by the Commission in the proposed 150-calendar day period.

*iii. Cluster Studies Provide Important Benefits, But Are Unlikely to Create the Time Savings Envisioned by the Commission*

The Commission noted that one of the reasons the 150-day period is reasonable is that the transmission provider “will be conducting only one interconnection study, or at most a small number of interconnection studies, at a time, allowing them to devote more resources to completing the studies in a timely manner.”<sup>25</sup> However, the Commission's statement does not accurately reflect the type and amount of work required for the Cluster Study that it proposes and the resources that will need to be committed to such study.

The NYISO has nearly two decades experience in conducting cluster studies through its Class Year Interconnection Facilities Study (“Class Year Study”) process. The NYISO strongly supports the use of cluster studies. They provide many benefits as compared to serial studies. Most importantly, they enable the transmission provider to more accurately identify and allocate the cost of upgrades required for projects interconnecting in close proximity within congested areas. This is particularly important in studying the impacts of proposed interconnections in highly congested areas such as New York City and Long Island.

While there are likely to be some timing efficiencies in moving from a serial to a cluster system impact study, the use of cluster studies is unlikely to result in the substantial time savings

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<sup>24</sup> The NYISO does not oppose the elimination of a mandatory, stand-alone Interconnection Feasibility Study in the Pro Forma LGIP as established in Order No. 2023. The NYISO has already made such study optional in New York. *See* NYISO OATT Attach. X Section 30.6. However, as described above, the NYISO will need to perform feasibility analysis for proposed projects early in the interconnection process. Under the NYISO's existing process, a developer that elects to forego the optional, stand-alone Feasibility Study must have physical feasibility evaluated in its system impact study.

<sup>25</sup> Order No. 2023 at P 326.

envisioned by the Commission. This is because a large share of the study work in the cluster study will concern identifying the upgrades required at or near the Point of Interconnection for the individual projects, or a subset of projects, within the cluster. This element of a cluster study effectively requires the transmission provider to perform individual studies within the broader cluster study framework, requiring many of the same resources that the transmission provider would be using if it were conducting the study on an individual basis. Only a small portion of the transmission provider's study work in a cluster study concerns assessing the impacts of the projects on the system as a whole and identifying broader upgrades on the system to address the reliable interconnection of some subset of the cluster. Even when this analysis can be performed for the full cluster, each individual project included in the cluster adds to the amount of work required to perform the cluster-wide analysis (*e.g.*, each project must be modeled).<sup>26</sup>

Accordingly, the Commission's statement that the transmission provider would only be conducting one or a small number of interconnection studies at a time ignores the reality that the transmission provider will need to perform a multitude of studies within the framework of the Cluster Study to provide the upgrade determinations and cost estimates required by the Pro Forma LGIP.

In addition, to the extent there are timing efficiencies gained, they may be offset by the substantial increase in the number of projects expected to participate in each Cluster Study going forward. The Commission's 150-calendar day period is arbitrary in not accounting for the impact of the number of projects in a cluster on the transmission provider's ability to complete a study within 150 calendar days. In the event the Commission establishes a firm deadline, the Commission should define the maximum number of projects that could enter a particular cluster

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<sup>26</sup> See Nguyen Affidavit at PP 18-19.

or provide for extending the timeframe for the study according to the size of the cluster. As detailed above, notwithstanding the clustered nature of the study, the transmission provider will still be required to perform substantial, individual analysis for each project that is in the Cluster Study. Some, but not all, of this work may be performed in parallel depending on the number of projects participating in the cluster.

*iv. Order No. 2023 Study Entry Requirements Are Not Likely to Materially Deter Participation in Cluster Studies*

In Order No. 2023, the Commission addressed the increase of projects with reference to its adoption of more stringent study deposit, commercial readiness, and site control rules, which along with withdrawal penalties, are intended to eliminate speculative projects from proceeding to interconnection studies.<sup>27</sup> While the NYISO supports the adoption of more stringent entry requirements, the NYISO's experience indicates that additional financial requirements do not materially change the large and increasing number of projects participating in its interconnection studies. As the NYISO has increased study deposits and added regulatory milestone deposits,<sup>28</sup> it has not seen a corresponding decrease in projects entering the queue or progressing to the Class Year Study where such deposits are fairly significant.<sup>29</sup> The entry requirements and withdrawal penalties adopted by Order No. 2023 are comparatively modest for the Cluster Study and will, therefore, be a minimal deterrent to speculative projects. Furthermore, other RTO/ISO

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<sup>27</sup> See, e.g., Order No. 2023 at P 968.

<sup>28</sup> To enter the NYISO's clustered facilities study – the Class Year Study – the financial requirements are a \$100,000 study deposit plus, if an applicable regulatory milestone has not been satisfied, an additional deposit of \$100,000 + 3000/MW). (NYISO OATT Attach. S Section 25.5.9.1, Attach. X Section 30.8.1).

<sup>29</sup> See Nguyen Affidavit at P 17.

regions have already adopted similar requirements without a noticeable reduction in the number of their study participants, resulting in proposals for even more stringent requirements.<sup>30</sup>

v. *The Commission Should Allow RTOs/ISOs to Propose Alternative Study Deadlines as Independent Entity Variations*

Order No. 2023 declined to adopt suggestions by the NYISO and various other commenters that transmission providers be allowed flexibility to set their own study deadlines.<sup>31</sup> The Commission stated that providing such flexibility “would undermine the purpose of ensuring that transmission providers complete interconnection studies by standard deadlines prescribed by their tariffs and thus would be insufficient to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, and timely manner.”<sup>32</sup>

The Commission should revise this holding on rehearing. The Commission’s determination to identify a single, firm study timeframe for all transmission providers does not recognize that actual interconnection study process requirements and challenges will be different in each region. In doing so, Order No. 2023 unreasonably treats transmission providers the same, regardless of different reliability standards applicable in their respective interconnection studies and regardless of their queue sizes. In the absence of a lengthier study period or flexibility to extend study periods to account for critical reliability evaluations and large clusters, transmission providers may need to consider rules limiting the size of clusters to enable the completion of essential study work, which would have the effect of excluding otherwise eligible

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<sup>30</sup> See, e.g., Midcontinent Independent System Operator (“MISO”) Presentation, Generator Interconnection Queue Improvements, Planning Advisory Committee (July 19, 2023) (“MISO Queue Improvement Presentation”) (proposing increasing initial milestone payment from \$4000/MW to \$10,000/MW); available at: <https://cdn.misoenergy.org/20230719%20PAC%20Item%2006%20GI%20Queue%20Improvements%20Proposals629634.pdf>.

<sup>31</sup> See Order No. 2023 at P 331.

<sup>32</sup> *Id.*

projects from timely moving forward and contradicts the Commission’s goals in Order No. 2023.<sup>33</sup>

If the Commission retains Order No. 2023’s penalty rules, then permitting transmission providers to justify alternative study deadlines would not detract from the Commission’s goal of ensuring that studies are completed by a tariff deadline.<sup>34</sup> Individual transmission providers should be permitted to adopt deadlines that are shown to be appropriate for the study scope and unique circumstances of the region. Order No. 2023 itself acknowledges that the Commission has already allowed the California Independent System Operator Corporation (“CAISO”) to extend its interconnection study deadlines of its queue cluster 14 “to account for the unprecedented increase in interconnection requests.”<sup>35</sup> Just days after Order No. 2023 was issued, the Commission granted CAISO’s request to extend its remaining queue cluster 14 deadlines and to “pause” queue cluster 15.<sup>36</sup> It is, therefore, arbitrary and capricious for Order No. 2023 to deny other RTOs/ISOs the ability to propose deadlines that better reflect their regional circumstances in their own Order No. 2023 compliance filings.

In the alternative, the Commission should grant clarification and specify that Order No. 2023 was not intended to prevent RTOs/ISOs from proposing region-specific study deadlines for some or all future studies in their individual Order No. 2023 compliance filings. Order No. 2023 stated that “transmission providers” could not make such proposals but does did not expressly say that RTO/ISO transmission providers may not.

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<sup>33</sup> See, e.g., PJM Interconnection, L.L.C., 181 FERC ¶ 61,162 at P 60, 67-68 (2002) (accepting transition requirements for revised interconnection process, including excluding certain projects from proceeding during transition phase); see also MISO Queue Improvement Presentation (proposing limitations to the size of each cycle).

<sup>34</sup> As noted below the NYISO disputes that Order No. 2023’s penalty regime would advance these goals in the first place.

<sup>35</sup> Order No. 2023 at n. 117, citing *Cal. Indep. Sys. Operator Corp.*, 176 FERC ¶ 61,207 (2021).

<sup>36</sup> See *Cal. Indep. Sys. Operator Corp.*, 176 FERC ¶ 61,207 (2021).



For the reasons explained above, the Commission’s 150-calendar day study period for the Cluster Study is arbitrary and capricious, does not reflect reasoned decision-making, and is not based on substantial evidence.

**B. Order No. 2023’s Interconnection Study Penalty Provisions Are Arbitrary and Capricious, Unjust, Unreasonable, Unduly Discriminatory, and Incompatible with Due Process Requirements**

The NYISO appreciates that timely completion of studies is an important part of a well-functioning interconnection process, including in New York. The NYISO did not oppose measures to improve the timeliness of studies during the rulemaking process. The NYISO remains committed to exploring properly designed and lawful approaches to encouraging transmission provider accountability that are compatible with the not-for-profit and revenue-neutral nature of the NYISO and other similarly situated RTOs/ISOs.

However, the NYISO, along with many other commenters,<sup>37</sup> explained in detail that imposing interconnection study penalties on not-for-profit RTOs/ISOs was not a reasonable approach. Doing so would be unjust, unreasonable, unduly discriminatory, and violative of due process, and would impede the Commission’s policy goals.<sup>38</sup> Unfortunately, the Commission did not substantially engage with many of these arguments or adequately explain its reasons for rejecting them. These defects in Order No. 2023 are inconsistent with the Commission’s statutory obligation to engage in reasoned decision-making.<sup>39</sup>

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<sup>37</sup> See, e.g., NYISO Reply Comments at 10; MISO Initial Comments at 13; MISO TOs Reply Comments at 20.

<sup>38</sup> The NYISO focuses in this request for rehearing on the unlawfulness of the penalty rules as applied to not-for-profit ISOs/RTOs. The NYISO does not directly address the lawfulness of imposing strict liability penalties on traditional for-profit transmission providers that, unlike the NYISO, are able to recover study penalty costs from shareholders. At the same time, a number of the arguments made herein might also be raised by such transmission providers.

<sup>39</sup> See *PSEG*, 665 F.3d at 208 (holding that the Commission’s “failure to respond meaningfully” to the arguments “renders its decision arbitrary and capricious.”); see *PPL Wallingford*, 419 F.3d at 1198 (same); *Golden Spread Elec. Coop. v. FERC*, 319 F.3d 522, 524 (D.C. Cir. 2003) (All arguments clearly expressed to the

Furthermore, Order No. 2023 adopted a problematic strict liability penalty regime that is arbitrary and capricious on its merits.<sup>40</sup> The final rule presumes that any missed study deadline is the fault of a transmission provider resulting automatically in a penalty.<sup>41</sup> There are only very limited exceptions which, as discussed below, are inadequate to ameliorate the harshness of the strict liability construct.

The Commission's specific errors are addressed in greater detail in Sections II.B.i – II.B.viii below. The crux of the problem is that imposing study penalties on not-for-profit RTOs/ISOs likely will be disproportionately punitive or ineffectual and unjust to consumers. Order No. 2023 ignores concerns that RTOs/ISOs face far greater financial consequences from penalties than traditional transmission providers that can pass penalty costs on to their shareholders. As the NYISO has emphasized, “financial penalties pose a potentially existential threat to ISOs/RTOs that could result in bankruptcy if they are denied the ability to recover penalty costs.”<sup>42</sup> At the same time, Order No. 2023 creates a risk that RTOs/ISOs will be denied recovery of such costs. Allowing RTOs/ISOs to attempt to find relief through an uncertain appeals process, or via FPA section 205 filings that may be rejected, does not eliminate the threat to them. The Commission does not adequately address the fundamental reality that the NYISO and similarly situated RTOs/ISOs must recover costs associated with a penalty regime from their customers as they have no other source of funds. Penalties would simply punish customers that have nothing to do with missed deadlines. In short, applying a strict liability penalty regime to RTOs/ISOs is inherently illogical, arbitrary, and capricious.

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Commission “[require] a real substantive response.”); *City of Vernon v. FERC*, 845 F.2d 1042, 1048 (D.C. Cir. 1988) (The Commission may not, “[n]o matter how rudimentary a claim . . . respond with a non sequitur.”).

<sup>40</sup> Order No. 2023 does not refer to its penalty construct as a strict liability system, although it acknowledges that multiple commenters, including the NYISO did. *See* Order No. 2023 at P 899 and n.1725.

<sup>41</sup> *See, e.g.*, Order No. 2023 at P 996 (“the study delay penalties are imposed automatically on the RTO/ISO under the pro forma LGIP.”)

<sup>42</sup> NYISO Initial Comments at 32.

This fundamental problem is exacerbated by the Commission’s refusal to fully consider the unintended consequences of a strict liability penalty regime.<sup>43</sup> As the NYISO emphasizes below in Section II.B.ii, penalties will incentivize completing studies before deadlines expire, but will also over-incentivize meeting deadlines at all costs.<sup>44</sup> Transmission providers will be encouraged to: (i) simplify or abbreviate their analyses in a rush to finish studies which could result in unexpected interconnection costs determinations; and (ii) take “shortcuts” when necessary to meet unreasonably short deadlines that could reduce reliability over time. These concerns are especially acute for the NYISO because New York State is pursuing what is arguably the most ambitious clean energy agenda in the country. New York’s policies are driving unprecedented levels of new Interconnection Requests by renewable resources. New York City also presents the most complex reliability challenges in the country. These are all critical considerations. Order No. 2023’s conclusory dismissal of them is arbitrary and capricious.

Commissioner Christie’s concurrence correctly emphasizes that Order No. 2023 “essentially punts” on the RTO/ISO cost recovery question.

But these provisions still leave open the question of how RTOs/ISOs will recover those study delay penalties that are not automatically imposed on a transmission-owning member. The final rule essentially punts on this question, explaining that RTOs/ISOs may submit an FPA section 205 filing to propose a default structure for recovering study delay penalties and/or make individual FPA section 205 filings to recover the costs of any specific study delay penalties. I urge that any such RTO/ISO filing make protections to consumers paramount.<sup>45</sup>

This approach is unlawful under the FPA, Administrative Procedure Act (“APA”),<sup>46</sup> and principles of due process. The RTO/ISO cost recovery question has been addressed in detail by

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<sup>43</sup> See Order No. 2023 at PP 1007, 1009.

<sup>44</sup> See NYISO Initial Comments at 38.

<sup>45</sup> Order No. 2023 (Christie, Comm’r, concurring at P 20).

<sup>46</sup> 5 U.S.C. §§ 551-559.

numerous commenters and has been acknowledged by the Commission itself.<sup>47</sup> It is arbitrary and capricious for the Commission to avoid its responsibility to address this issue because it is central to whether Order No. 2023's penalty regime is just, reasonable, unduly discriminatory, and compatible with due process. The Commission should not defer the question to future section 205 or penalty appeal proceedings. It must resolve the problem now.

The NYISO respectfully submits that the only resolution consistent with the reasoned decision-making requirement is for the Commission to reverse Order No. 2023's study penalty determinations. To the extent that the Commission decides that something else must be done to incentivize interconnection study performance there is still ample time to determine what that should be in each RTO/ISO region and to implement an alternative. Order No. 2023's transition rule means that penalties will not be implemented for some time in regions that already use cluster studies.<sup>48</sup>

As the NYISO emphasized in its reply comments concerning the Notice of Proposed Rulemaking ("NOPR") in this proceeding, many superior alternatives to a strict liability penalty regime have been proposed in this proceeding.<sup>49</sup> For example, the Commission could allow

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<sup>47</sup> See, e.g., Order No. 2023 at P 876 ("The Commission acknowledged that the application of penalties for late studies in the context of RTOs/ISOs may raise several unique issues."); *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators* 122 FERC ¶ 61,247 at P 1(2008) ("The Commission recognizes the importance of RTOs and ISOs in providing transmission service, enhancing reliability and administering electric energy markets throughout the country, and acknowledges that these entities, to the extent they operate as not-for-profit organizations funded by their customers, may have insufficient reserves to pay penalties assessed pursuant to section 215 of the FPA.") ("Reliability Penalty Guidance Order").

<sup>48</sup> See Order No. 2023 at P 980 ("[T]ransmission providers already using a cluster study process will not be subject to penalties until the third cluster study cycle after the Commission-approved effective date of the transmission provider's filing in compliance with this final rule.")

<sup>49</sup> See NYISO Reply Comments at 10 (referencing the NYISO's proposal to enhance Order No. 845's requirements, hold regional technical conferences, or explore the various other substantive proposals that other parties put forward in this proceeding).

individual RTO/ISO regions to propose alternative rules as independent entity variations in their Order No. 2023 compliance filings.<sup>50</sup> The NYISO also suggested that the Commission:

[C]ould build on Order No. 845 by updating and enhancing its reporting requirements. Future interconnection metrics reports could provide more specific descriptions of the primary drivers of missed deadlines, perhaps using standardized terminology established by a final rule. The objective would be to create even more transparency than Order No. 845 by more clearly identifying the specific actions and entities contributing to issues and the relative weight of their contributions. Armed with this information, the Commission would better understand why studies may take longer than expected to complete and be able to take targeted actions to address any problems, including in any instances where an ISO/RTO is truly at fault.<sup>51</sup>

The Commission should revisit Order No. 2023’s rejection of this and other proposals.<sup>52</sup>

As discussed below, the Commission’s decision was based in substantial part on its finding that Order No. 2023’s procedural “safeguards” would prevent its penalty rules from being unduly harsh to RTOs/ISOs.<sup>53</sup> But that assumption is mistaken. The fact that identifying and implementing alternatives for RTO/ISO regions may be more difficult than imposing a one-size-fits-all strict liability penalty regime does not mean that such a regime is not arbitrary and capricious.<sup>54</sup>

- i. The NYISO Cannot Pay Study Penalties Without Recovering the Costs from its Customers. Being Denied Permission to Recover These Costs Would Therefore Be Disproportionately Punitive to the NYISO and to Similarly Situated RTOs/ISOs.*

The NOPR and Order No. 2023 both recognized that imposing study penalty costs on RTOs/ISOs would raise “unique” issues. This is because Commission precedent prevents public

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<sup>50</sup> See NYISO Initial Comments at 41.

<sup>51</sup> NYISO Initial Comments at 31.

<sup>52</sup> See Order No. 2023 at P 1025.

<sup>53</sup> See *id.* at P 972.

<sup>54</sup> The Commission could accept alternatives to strict liability penalties without necessarily restoring the reasonable efforts standard either as a *pro forma* rule or even as an independent entity variation in RTO/ISO regions. However, as discussed in Section II.B.vi below the NYISO is separately asking the Commission to modify its elimination of the reasonable efforts standard on rehearing.

utilities from passing penalty costs on to customers, but RTOs/ISOs are public utilities that lack shareholders to absorb such costs.<sup>55</sup> Thus, if RTOs/ISOs are not allowed to recover penalty costs from customers, it could present an existential financial risk. These “unique” issues are the very reason that the Commission has previously authorized RTOs/ISOs to make FPA section 205 filings to recover reliability penalty costs.<sup>56</sup> They are also why Order No. 2023 adopted, with modifications, the NOPR’s proposal to allow RTOs/ISOs to make section 205 cost recovery filings with respect to interconnection study penalty costs.

Order No. 2023 rejected arguments that a strict liability study penalty regime would threaten the financial viability of the NYISO and similarly situated RTOs/ISOs. The Commission disagreed “with NYISO that study delay penalties would threaten the financial viability of RTOs/ISOs or fail to incentivize RTOs/ISOs to complete studies by the required deadlines.”<sup>57</sup> It further said that “[t]he evidence in this record does not demonstrate that the study delay penalty structure that we adopt in this final rule, combined with the multiple adopted safeguards, including a total cap on study delay penalty amounts, would threaten the financial viability of an RTO/ISO, particularly given that RTOs/ISOs may submit FPA section 205 filings to recover study delay penalties.”<sup>58</sup>

This holding is arbitrary and capricious. There is extensive evidence in the record that the NYISO and similarly situated RTOs/ISOs cannot pay penalties without recovering the costs from customers in some form and that being denied permission to recover those costs could

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<sup>55</sup> See Order No. 2023 at P 876, citing NOPR at P 171.

<sup>56</sup> See, e.g., Reliability Penalty Guidance Order at P 16 (“Accordingly, as discussed below, we will not allow RTOs and ISOs to adopt tariff mechanisms that provide automatic recovery of penalties incurred for Reliability Standard violations and will instead require that proposals to recover any such penalties be filed case-by-case. In evaluating such proposals, the Commission will consider, among other things, the nature of the Reliability Standard violation and the factors that contributed to the violation, including the integrity of the RTO or ISO’s compliance program to prevent such violations.”).

<sup>57</sup> Order No. 2023 at P 999.

<sup>58</sup> *Id.*

threaten their financial viability. There is no basis for the Commission to reject out of hand the concerns expressed, and the calls for alternatives to financial penalties, by the NYISO and similarly situated RTOs/ISOs. For the avoidance of any possible doubt, the NYISO reiterates here that it has not identified any method through which it could pay penalty costs that would not ultimately be funded by its customers in some form.

The fact that RTOs/ISOs may make FPA section 205 filings to recover study penalty costs does not eliminate the risk that penalties pose. Section 205 filings are proposals, which the Commission may reject. In fact, the Commission has underscored that it may reject a NYISO reliability penalty cost recovery filing.<sup>59</sup> The Commission stated that “its review of individual recovery filings would provide a ‘constant check on the NYISO’s behavior. NYISO must come before the Commission in each instance that it seeks to pass through a penalty, and have the request be considered on a case-by-case basis. If the Commission were ever to find that the NYISO became lax in its pursuit of reliability . . . then the Commission could simply deny relief or take other appropriate action.’”<sup>60</sup> The Commission further emphasized that it would consider multiple factors beyond the NYISO’s ability to pay when deciding whether to allow recovery.<sup>61</sup>

Given the number of comments in this proceeding that objected to RTO/ISO cost recovery, it is reasonable to assume that there will be future challenges to any section 205 submissions. This would be the case for both penalty-specific filings and “default structure” proposals to add generally applicable study penalty assignment provisions to RTO/ISO tariffs. The fact that the Commission has not, to the NYISO’s knowledge, rejected a reliability penalty cost filing in the past does not mean that future penalty cost proposals will be granted. Indeed,

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<sup>59</sup> See NYISO Initial Comments at 34.

<sup>60</sup> *Id.*, citing *N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶61,196 at P 36 (2009).

<sup>61</sup> NYISO Initial Comments at 35, citing 127 FERC ¶61,196 at P 36.

the PJM Interconnection, L.L.C.’s (“PJM”) pending section 205 proposal to recover \$140,000 in reliability penalty costs has been contested on the ground that PJM should absorb the penalty itself.<sup>62</sup> The NYISO has never incurred a reliability penalty, but its 2009 filing to establish “default” tariff provisions governing reliability penalty cost recovery was also protested.<sup>63</sup> Consequently, it is not reasoned decision-making for Order No. 2023 to depict the fact that RTOs/ISOs may ask for cost recovery as adequately addressing the “unique issues” RTOs/ISOs face when there is a real possibility that recovery will be denied.

Order No. 2023 asserts for the first time that RTOs/ISOs actually are authorized to pay penalty costs, seemingly without first making any kind of section 205 filing, by using funds that are not related to transmission services.<sup>64</sup> The Commission states that RTOs/ISOs “have other ways to fund study delay penalties beyond the revenue they collect for sales of transmission service: for example, RTOs/ISOs collect administrative fees from market participants.”<sup>65</sup> Order No. 2023 offers the following additional examples of potential RTO/ISO vehicles for penalty cost recovery:

MISO recovers the costs of providing financial transmission rights (FTR) administrative service from FTR holders under its Rate Schedule 16 (MISO Tariff, Schedule 16). SPP recovers the costs of administering its transmission administration service, transmission congestion rights administrative service, and integrated marketplace clearing administrative service from transmission customers and market participants under its Rate Schedule 1-A (SPP Tariff, Schedule 1-A). PJM recovers the costs of its control area administration service,

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<sup>62</sup> As of the date of this filing, PJM’s penalty cost recovery proposal is pending in Docket No. ER23-2327-000.

<sup>63</sup> See *N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶61,196 (2009).

<sup>64</sup> Order No. 2023 is clear that the Commission is not seeking to tie penalty cost recovery to executive compensation at RTOs/ISO. See Order No. 2023 at P 1025. Order No. 2023 also acknowledges arguments citing precedent holding that the Commission lacks authority to so. See Order No. 2023 at P 949 and n. 1868; see also *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-A, 128 FERC ¶ 61,059, at P 182 (“[T]he Commission mandating specific requirements with respect to board structure or board and management compensation could lead to a slippery slope, and may also be outside the Commission’s jurisdiction.” (footnote omitted) (citing *Cal. Indep. Sys. Operator Corp v. FERC*, 372 F.3d 395 (D.C. Cir. 2004))), *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>65</sup> Order No. 2023 at P 998



which includes “preserving the reliability of the PJM Region and administering Point-to-Point Transmission Service and Network Integration Transmission Service” from users of the service under Schedule 9-1 (PJM Tariff, Schedule 9-1).”).<sup>66</sup>

The NYISO recovers its costs via Rate Schedule 1 of its OATT, which is also incorporated into its Market Administration and Control Area Services Tariff (“Services Tariff”). Rate Schedule 1 costs are assessed to the NYISO’s customers, based on their physical energy injections, withdrawals, Transmission Congestion Contract auction awards, and virtual trading activity. The RTO/ISO schedules referenced above appear to be similar in nature to Rate Schedule 1.

Order No. 2023 appears to overlook the fundamental fact that however styled or allocated, any funds collected by the RTOs/ISOs must come from market participants. The Commission seems to draw an artificial distinction in this context between funds associated with the provision of transmission services and funds collected for other services. It is not clear why the Commission would allow RTOs/ISOs to automatically recover study penalty costs from non-transmission charges while simultaneously requiring them to make section 205 filings to recover such costs from transmission customers. RTOs/ISOs would have no reason to risk rejection of a section 205 filing to recover from transmission customers if they could recover penalty costs automatically from other customers. In addition, customers paying non-transmission charges appear to be similarly situated to transmission customers in that they will normally play no part in causing interconnection study delays. Subjecting similarly situated customers to disparate treatment without a reasoned justification is the very definition of undue discrimination.<sup>67</sup>

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<sup>66</sup> *Id.* at n. 1928.

<sup>67</sup> *ConEd. Inc. v. FERC*, 45 F.4th 265, 282 (D.C. Cir. 2022) (citing *Mo. River Energy Servs.*, 918 F.3d 954, 958 (D.C. Cir. 2019)). See 16 U.S.C. § 824d; 16 U.S.C. § 824e.

At a minimum, the NYISO anticipates that the various parties that opposed allowing RTOs/ISOs to recover penalty costs in this proceeding would object to allowing automatic recovery via non-transmission-related charges. Thus, even if the Commission intends to allow such automatic recovery, the likelihood of challenges means that recovery would not be guaranteed.

In short, Order No. 2023's assertion that RTOs/ISOs have "other ways to fund study delay penalties beyond the revenue they collect for sales of transmission service" appears to be inaccurate with respect to the NYISO and does not rescue Order No. 2023's strict liability penalty regime from being arbitrary, capricious, and unlawful. The RTO/ISO cost recovery question continues to exist despite Order No. 2023's assertions. If the NYISO, or a similarly situated RTO/ISO, cannot recover penalty costs, it will face the "unique issues" that the final rule purports to address. It is not reasoned decision-making for the Commission to disregard this reality.

In the alternative, the Commission should clarify that it actually intended for the final rule to authorize RTOs/ISOs to recover penalty study costs from consumers without first seeking the Commission's permission so long as they do so through non-transmission-related charges, such as administrative fees assessed against market participants. Such a clarification could resolve the NYISO's concerns about Order No. 2023's strict liability study penalty regime. However, the various concerns raised in this request for rehearing will not be addressed absent express clarification by the Commission.

ii. *Order No. 2023 Does Not Meaningfully Address the Perverse Incentives and Unintended Consequences that Strict Liability Study Penalties Will Create*

The NYISO and many other commenters<sup>68</sup> warned that imposing study penalties would create harmful incentives for transmission providers. As the NYISO said, “[e]xposure to disproportionately heavy penalties for study delays would also create perverse incentives to prioritize meeting deadlines over the quality and completeness of studies. These incentives would undermine the interconnection study process that outweigh any possible positive impact on ‘accountability.’”<sup>69</sup> RTOs/ISOs “would be incentivized to provide developers with less flexibility, to be less able to accommodate special or unusual requests, less able to work to remedy deficiencies in interconnection requests, and more inclined to reject requests.”<sup>70</sup> The NYISO also emphasized that study penalties would discourage the close collaboration among RTOs/ISOs, their transmission owner members, and interconnection customers that is necessary for the interconnection study process to function, let alone to be improved.<sup>71</sup> Thus, the practical effect of study penalties would be to undermine the Commission’s goal of improving the interconnection process.

Of even greater concern was the potential harm that study penalties could have on reliability. The NYISO described this danger in detail:

Just as importantly, incentivizing ISOs/RTOs to prioritize speed over accuracy and completeness would inevitably encourage shortcuts that could reduce reliability over time. To be clear, the NYISO, and the professionals that it employs, would never consciously make decisions that sacrificed reliability to avoid penalties. The same is surely true of other ISOs/RTOs. Nevertheless, even the most diligent and conscientious people would be influenced, at some level, by the need to avoid penalties. Studies conducted under strict time pressure could be inferior to what they would have been otherwise. Less attention might be devoted to a complete review of project modeling data and associated model

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<sup>68</sup> See, e.g., PJM Reply Comments at 3 (citing IRC Initial Comments at 2-4, 8-9); MISO Reply Comments at 24; MISO TOs Reply Comments at 17-18, 21; Indicated PJM TOs Reply Comments at 26; PPL Companies Initial Comments at 19; SPP Initial Comments at 11, 15; CAISO Initial Comments at 26; MISO Initial Comments at 71, 77-78; MISO TOs Initial Comments at 24; PJM Initial Comments at 55-57.

<sup>69</sup> NYISO Initial Comments at 32.

<sup>70</sup> *Id.* at 38.

<sup>71</sup> See NYISO Reply Comments at 9, citing ISO/RTO Council Comments at 8-9 (the NYISO was a signatory to those comments)}.

modifications, certain design contingencies or system conditions might not be evaluated as thoroughly, dynamic stability results might not be assessed as fully, etc. Having less time to finish a study could result in the identification of upgrades that mitigate reliability impacts but are not the optimal choices for the system. Construction estimates and design specifications could be less accurate. The cumulative impact of these individual imperfections over time could adversely impact reliability. The Commission should not create incentives for interconnection studies to be merely “good enough” instead of excellent.<sup>72</sup>

Order No. 2023 does not adequately address these very serious issues or provide the reasoned explanation demanded by the APA. The Commission disagreed that study penalties “will necessarily reduce interconnection study flexibility and accuracy as well as system reliability” because it is ostensibly “within transmission providers’ ability to improve interconnection study processes and policies and take other measures, such as hiring additional staff, to efficiently process interconnection queues without sacrificing accuracy, flexibility, or reliability.”<sup>73</sup> The Commission agreed with another commenter that “there is not an inherent tradeoff between holding transmission providers accountable and transmission system reliability.”<sup>74</sup> The Commission rejected concerns that penalties would impede collaboration on interconnection studies on the ground that, “[t]he incentive for transmission providers to timely complete interconnection studies created by the study delay penalty structure should improve coordination among transmission providers and interconnection customers to ensure that transmission providers have the information needed to complete the studies and, if there is an issue, to pursue a potential extension of the deadline via mutual agreement.”<sup>75</sup> Finally, the Commission pointed to Order No. 2023’s supposed safeguards for transmission providers as a further reason not to worry about perverse incentives or unintended consequences.<sup>76</sup>

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<sup>72</sup> *Id.* at 39.

<sup>73</sup> Order No. 2023 at P 1007 (footnotes omitted).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at P 1009.

<sup>76</sup> *Id.* at P 1007.

These responses are inadequate, are inconsistent with reasoned decision-making, and will not diminish the harm that Order No. 2023’s penalty regime may cause. The Commission has effectively ignored the factual arguments made by the NYISO and other commenters. The Commission may not dismiss the incentives that strict liability penalties will give transmission providers to seek to avoid penalties with a conclusory assertion that transmission providers will simply improve their efforts, staffing, and processes. Transmission providers will doubtless strive to do all three, but this will not eliminate their incentive to prioritize timely completion over study quality or the adverse effect this incentive may gradually have on reliability. Similarly, it is not reasoned decision making for the Commission to claim that penalties will actually foster greater cooperation among RTOs/ISOs and their member transmission owners when numerous RTOs/ISO and transmission owners have advised the Commission that penalties will have the exact opposite effect. The assertion that there is no “inherent tradeoff” between accountability and reliability is not a reasoned response to the NYISO’s point that strict liability penalties may diminish reliability over time. Finally, as discussed below in Section II.B.iv, Order No. 2023’s supposed transmission provider safeguards, including the referenced “mutual agreement” extensions, are too weak or impractical to avoid the harmful incentives and deleterious consequences that a strict liability penalty regime will create.

*iii. Order No. 2023’s Strict Liability Study Penalty Regime Is Inherently Arbitrary and Capricious Because RTOs/ISOs Will Often Not Actually Be Responsible for Study Delays*

Order No. 2023’s application of a strict liability penalty study regime to RTOs/ISOs is arbitrary and capricious because RTOs/ISOs will often not be responsible for study delays. Order No. 2023 acknowledges that this is the case when it notes that, “[i]t may be difficult to precisely determine the cause of any given delay, especially where delay occurs due to multiple

factors.”<sup>77</sup> A lawful penalty regime must not impose penalties on entities that do not deserve them. The Commission may not reasonably presume that RTOs/ISOs should be penalized at the same time that it recognizes that overwhelming record evidence demonstrates that other parties will often be solely or substantially responsible for delays.<sup>78</sup> The NYISO’s comments pointed to RTO/ISO interconnection metrics compliance reports under Order No. 845 as specific evidence of how a variety of complex and interactive factors can cause study delays. The Commission did not meaningfully address this evidence. The Commission has continued to receive such reports in the time since the NYISO’s comments, and they continue to show the same thing.<sup>79</sup>

It is also arbitrary and capricious to impose penalties for missing study deadlines that have not been shown to be just and reasonable. Section II.A above explains in detail why Order No. 2023’s 150-day cluster study timeframe is not just and reasonable. The NYISO and other commenters made a similar showing with respect to existing study deadlines,<sup>80</sup> but this was not addressed by the Commission. As addressed above, Order No. 2023 cites no record evidence to support its deadlines. Instead, Order No. 2023 acknowledges the increased complexity and number of interconnection requests in recent years. It states that, “[i]n addition to the drastic increase in the number of interconnection requests in all regions of the country, evidence shows that interconnection studies have increased in complexity since the Commission issued Order No. 2003, potentially straining transmission provider resources.”<sup>81</sup> Similarly, “[t]here is every

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<sup>77</sup> *Id.* at P 989.

<sup>78</sup> *See, e.g.*, Order No. 2023 at P 972. NYISO Initial Comments at 43. PJM Reply Comments at 3-5. MISO Initial Comments at 74. MISO TOs Initial Comments at 15, 16-17, 18, 21, 25-26. *See* Order No. 2023 at PP 876, 966, 1008; *See* NOPR at P 172.

<sup>79</sup> *See* NYISO’s August 14 filing in Docket No. ER19-1949-000.

<sup>80</sup> *See, e.g.*, NYISO Initial Comments at 29-30 and n.75; Indicated PJM TOs Initial Comments at 38-39; PJM Initial Comments at 55; NYTOs Initial Comments at 3, 26 and n. 52 (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). *See* PJM Reply Comments at 2,3. *See also* SPP Initial Comments at 13.

<sup>81</sup> Order No. 2023 at P 41, citing NYISO Initial Comments at 6-7 *see also id.* at P 42. *Id.* (Clements, Comm’r, concurring at P 9).

reason to believe that many of the factors contributing to significant interconnection queue backlogs and delay—including the rapidly changing resource mix, market forces, and emerging technologies—will persist.”<sup>82</sup> As noted above, in Section II.A.v, these considerations have led the Commission to accept multiple interconnection study deadline extensions in California. Nevertheless, Order No. 2023 disregards the possibility that these factors might make its study deadlines unreasonable and gives no explanation for its position.

Finally, Order No. 2023 is wrong to claim that other previously adopted penalty rules involving reliability penalties, transmission studies, or “traffic tickets” are comparable to its strict liability regime for interconnection study penalties. As Order No. 2023 acknowledges, “traffic ticket” penalties are applied solely based on objective criteria that can be applied automatically.<sup>83</sup> Study delays raise much more complex questions about who is actually to blame for untimeliness. The fact that the Commission recognized the need for an appeals process<sup>84</sup> to resolve inevitable factual disputes about penalties demonstrates that the traffic ticket model is not relevant.

The Commission also failed to meaningfully address arguments by the NYISO and others distinguishing the reliability penalty construct from Order No. 2023’s strict liability penalty model. The NYISO explained that reliability penalties are generally non-financial and that when financial penalties do apply there are numerous mechanisms in place to avoid unfairly harsh results.<sup>85</sup> In response, the Commission said only that “transmission providers will have an

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<sup>82</sup> Order No. 2023 at P 996.

<sup>83</sup> *Id.* at P 1015.

<sup>84</sup> See Section B.iv below.

<sup>85</sup> See NYISO Initial Comments at 35 (“By contrast, at least since NERC’s implementation of its “find, fix, track, and report” enforcement paradigm in 2012, many violations of reliability standards do not result in any financial penalty. Non-compliance only leads to penalty liability after a risk-based evaluation of all of the facts and circumstances related to an individual violation. Violators may avoid penalties for a variety of reasons including demonstrating a culture of compliance, cooperating with investigations, and taking effective remedial actions. Thus, the reliability penalty regime incorporates due process.”) (footnotes omitted).

opportunity to seek relief from a penalty by filing an appeal, which the Commission will closely scrutinize and in response to which the Commission will issue an order.”<sup>86</sup> Once again this is not reasoned decision-making given: (i) the inchoate nature of the Order No. 2023 appeals process compared to the fully developed reliability penalty rules; and (ii) Order No. 2023’s unreasonable presumptions that transmission providers are at fault for study delays and that all study delays warrant penalties. The Commission also effectively ignored the NYISO’s arguments addressing Order No. 890’s transmission study penalties.<sup>87</sup>

*iv. Order No. 2023’s Strict Liability Penalty Regime Does Not Include Adequate Safeguards Against Excessive or Unjust Penalties*

As the NYISO and others have argued in this proceeding,<sup>88</sup> the FPA’s “just and reasonable” standard, the APA’s “arbitrary and capricious” framework, and Fifth Amendment due process requirements all dictate that Commission-imposed penalties must be fair and proportionate. Any penalty regime must be supported by substantial evidence demonstrating that it passes muster under each of these standards. The Commission may not establish penalties that are excessively punitive in relation to the severity of a violation.<sup>89</sup>

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<sup>86</sup> Order No. 2023 at P 1001.

<sup>87</sup> The Commission referenced the NYISO’s objections to treating the Order No. 672 reliability penalty rules and Order No. 890 transmission study penalty provisions as relevant precedents for interconnection study penalties. *See* Order No. 2023 at P 925. However, when it disposed of arguments relating to Order No. 890 it made no express mention of the NYISO’s arguments. *See* Order No. 2023 at P 1015. Moreover, Order No. 2023’s response to other parties’ arguments involving Order No. 890 does not constitute reasoned decision-making. Order No. 2023 states that, “in response to commenters who argue that the proposed study delay penalty structure differs from the penalty structure implemented in Order No. 890 for transmission service studies, we believe that such differences are warranted by the significant and growing interconnection queue backlogs. We agree with PacifiCorp that, compared to transmission service requests, interconnection studies are more numerous, complex, and susceptible to delays.” Order No. 2023 at P 1015. It is not reasonable to cite the fact that interconnection studies are more numerous, complex, and susceptible to delays than transmission studies as a reason for treating the two identically.

<sup>88</sup> *See, e.g.*, Indicated PJM TOs Initial Comments at 43-44; MISO TOs Initial Comments at 18-19, 21; MISO Initial Comments at 13-16; ISO/RTO Council Initial Comments at 1; *see* MISO Reply Comments at 19, 22; *see* PJM Initial Comments at 8.

<sup>89</sup> *See, e.g.*, *Revised Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 at P 222 (2008); *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 50-71 (2008) at 51 (“With this expanded authority comes added responsibility to ensure that the Commission’s penalty determinations are fair and reasonable, and take



Order No. 2023 implicitly acknowledged that the Commission must adhere to due process principles by modifying the NOPR to adopt “safeguards” that nominally address the “unique issues” facing RTOs/ISOs. But Order No 2023’s changes are insufficient. In some cases, they have made the RTO/ISO penalty cost recovery problem even worse.

For example, Order No. 2023 leans heavily on a new “appeals” system as a hypothetical due process safety valve. But this is arbitrary and capricious because the new appeals process wrongly places the burden on RTOs/ISOs to demonstrate that they are not responsible for late studies. As noted above, there are good reasons to anticipate that RTOs/ISOs will not actually be responsible for many delays, some of which Order No. 2023 even acknowledges.

Furthermore, Order No. 2023’s description of the appeals process is so incomplete that it cannot reasonably be viewed as any kind of due process “safeguard.” Order No. 2023 says that appeals will be decided based on a “good cause” review but that the Commission has used that standard for procedural not substantive matters. The Commission also indicates that it “may consider, among other factors: (1) extenuating circumstances outside the transmission provider’s control, such as delays in affected system study results; (2) efforts of the transmission provider to mitigate delays; and (3) the extent to which the transmission provider has proposed process enhancements either in the stakeholder process or at the Commission to prevent future delays.”<sup>90</sup> No guidance is provided as to what exactly a transmission provider must do to overcome Order No. 2023’s presumption that it was at fault. There is no indication of whether appeals will utilize fact-finding neutrals such as administrative law judges, or via “paper hearing” procedures, or

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into account the unique factors relevant to a given violation. As we discussed in our 2005 Policy Statement, and as we describe more fully below, we implement these statutory mandates and our due process obligations by taking into account numerous factors in determining the appropriate civil penalty for a violation, including the nature and seriousness of the violation and the company’s efforts to remedy it.”).

<sup>90</sup> Order No. 2023 at P 987.

through some other method. Order No. 2023 suggests that appeals will produce orders that may be challenged on rehearing<sup>91</sup> but it is unclear how “good cause” determinations will be reviewed under the APA. The Commission has effectively left the resolution of appeals to its own discretion. However, Order No. 2023’s statement that it would not be “appropriate to impose penalties only where a factor can be conclusively determined to be within a transmission provider’s control” suggests that a transmission provider’s burden on appeal will be unreasonably heavy.

Order No. 2023’s appeals process, therefore, cannot reasonably be invoked as an adequate assurance of due process. At a minimum, it would only begin to be a meaningful “safeguard” if the Commission did not presume transmission provider fault and if appeals procedures were more clearly delineated.

Order No. 2023 argues that “many of the reforms adopted in this final rule will help to mitigate factors that may prolong the study process, such as the submission of speculative interconnection requests.”<sup>92</sup> This may be true, as far it goes. But for the Commission to assume without evidence that those improvements will fully offset the new burdens that Order No. 2023 places on transmission providers is not reasoned decision-making.<sup>93</sup> Similarly, the fact that Order No. 2023 declined to adopt certain proposed reforms that would have required additional work from transmission providers will not necessarily outweigh the expected increase in the number and complexity of interconnection requests in the years ahead. This is especially true when Order No. 2023 itself acknowledges that this increase is very likely to occur.<sup>94</sup>

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<sup>91</sup> *Id.*

<sup>92</sup> Order No. 2023 at P 989. *See also* Order No. 2023 at P 1006 (“[W]e anticipate that other provisions of this final rule will result in improved interconnection queue management and processing, which should ease the burden on transmission providers over time.”)

<sup>93</sup> *See* Order No. 2023 at P 1005.

<sup>94</sup> Order No. 2023 at P 995.

Order No. 2023’s adoption of a ten business-day “grace period”<sup>95</sup> does not provide meaningful relief to transmission providers, such as the NYISO, that will be required to study a very large number of interconnection requests while accounting for highly complex reliability considerations. The Commission’s adoption of an identical grace period for all transmission providers despite the fact that different transmission providers may face dramatically different study workloads (and the questions raised above concerning the reasonableness of cluster study deadlines themselves), is yet another example of unreasoned decision-making.

It likewise does no good for Order No. 2023 to allow 30-day study deadline extensions “by mutual agreement of the transmission provider and all interconnection customers with interconnection requests in the relevant study.”<sup>96</sup> It is not reasoned decision making for the Commission to conclude without evidence that a 30-day extension period is a reasonable safeguard for all regions, especially when (as noted above) the underlying deadlines themselves have not been shown to be reasonable. Moreover, in practice, “mutual agreement” extensions will not be available to entities like the NYISO that will be conducting interconnection studies potentially involving more than a hundred interconnection requests. Each interconnection customer in the study will have an incentive to oppose an extension since their study costs would be offset by penalty charges. Allowing any single interconnection customer to veto an extension seems virtually certain to ensure that extensions will not be granted and thus to nullify whatever benefit 30-day extensions might bring.

Similarly, the final rule’s directive that transmission owners be automatically assigned late study penalties for any study that they conduct is not a reasoned solution to RTO/ISO cost recovery questions. Order No. 2023 states that “for RTOs/ISOs in which the transmission-

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<sup>95</sup> See Order No. 2023 at P 981.

<sup>96</sup> *Id.* at P 982.

owning members perform certain interconnection studies, the study delay penalties imposed under the new *pro forma* LGIP will be imposed directly on the transmission-owning member(s) that conducted the late study, thereby mooted the issue of how RTOs/ISOs recover those specific penalties. We believe that this change will also reduce the administrative burden, as RTOs/ISOs will typically not need to seek cost recovery for late facilities studies because those studies are often conducted by transmission-owning members.”<sup>97</sup>

The Commission’s approach does not reflect the complexities of how the interconnection study process works in practice. As noted above, RTOs/ISOs and their member transmission owners work collaboratively on most interconnection studies. In the NYISO, transmission owners perform some part of all interconnection studies, and none are performed entirely by transmission owners. The Nguyen Affidavit explains how close the coordination is between the NYISO and the transmission owners in more detail.<sup>98</sup> Allocating responsibility for delays among RTOs/ISOs and transmission owners will be a highly subjective and contentious fact-intensive exercise. Concerns over penalty culpability likely will foster counterproductive “defensive” actions and adversarial postures in a study process that heavily depends on cooperation to be successful. If the Commission’s intent is that transmission owners bear 100% of the penalty for any study that they have any involvement with then there will foreseeably be transmission owner challenges to every penalty assignment. If instead, the intent is that transmission owners be assigned penalties for collaborative studies only to the extent that they contributed to a missed deadline, then there will still be a need to objectively determine the RTO’s/ISO’s and transmission owner’s relative responsibility. Either way, it is arbitrary and capricious for Order No. 2023 to present direct assignment of penalty costs to transmission

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<sup>97</sup> *Id.* at P 995.

<sup>98</sup> *See* Nguyen Affidavit at P 11-13.

owners as helping to reduce the problem of RTO/ISO cost recovery when it will not do so in practice.

Order No. 2023 significantly increased penalty levels from the amounts proposed in the NOPR. The Commission did this because it agreed with certain commenters that the original proposal, *i.e.*, \$500/per business day that a study was late, was “insufficient to incentivize transmission provider actions that will reduce the incidence of study delays.”<sup>99</sup> The Commission points to a single example in which a six-month delay would result in a \$63,000 penalty to demonstrate that the NOPR’s penalties were too low. This one example hardly represents substantial evidence that Order No. 2023 has set penalties at non-punitive levels. But even assuming that the Commission’s estimates about penalty amounts might be appropriate for some transmission providers, it was still arbitrary and capricious for the Commission to conclude that Order No. 2023’s penalty increase was appropriate for not-for-profit RTOs/ISOs. This is especially true given that the NYISO and others told the Commission that applying even higher penalties to RTOs/ISOs would be disproportionately punitive.<sup>100</sup> Order No. 2023 made no attempt to address this argument or to justify its conclusory reasoning.

Order No. 2023’s establishment of a longer transition period before penalty rules go into effect is an incremental improvement over the NOPR.<sup>101</sup> But a lengthier transition period cannot cure the fundamental legal and policy flaws with the final rule’s penalty regime. Order No. 2023 simply postpones the RTO/ISO penalty cost recovery problem without resolving it.

Finally, Order No. 2023 declined to adopt the NOPR’s proposed *force majeure* exception from penalties. The NYISO, and others, had argued that a *force majeure* exception should be

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<sup>99</sup> Order No. 2023 at P 974.

<sup>100</sup> *See, e.g.*, NYISO Reply Comments at 8-9; MISO TOs Initial Comments at 18-22; MISO TOs Reply Comments at 6.

<sup>101</sup> *See* Order No. 2023 at P 980 and n. 49 above.

established, and in fact made even broader than the NOPR contemplated.<sup>102</sup> But Order No. 2023 dropped the idea on the ground that “any events that qualify as *force majeure*” could be considered as part of the penalty appeal process. Given the issues described above with Order No. 2023’s conception of an appeal process, Order No. 2023’s rationale for dropping the *force majeure* proposal was inconsistent with reasoned decision-making.

v. *Applying a “One-Size-Fits-All” Strict Liability Penalty Regime to RTOs/ISOs Is Unduly Discriminatory*

Order No. 2023 rejected arguments by the NYISO and others that imposing the same penalty regime on RTOs/ISOs as traditional transmission providers was unduly discriminatory. The Commission stated that, “we find that it is appropriate to incentivize RTOs/ISOs to meet study deadlines in the same manner as non-RTO/ISO transmission providers. Thus, we also disagree with NYISO that the study delay penalties for RTOs/ISOs should be smaller in size and slower to trigger.”<sup>103</sup>

Order No. 2023 does not reasonably address the point that subjecting RTOs/ISOs to the same penalties as transmission providers that have guaranteed means of absorbing penalty costs is unduly discriminatory. The FPA prohibits undue discrimination, *i.e.*, it forbids entities that are “similarly situated” from being treated differently without a valid reason.<sup>104</sup> Imposing identical penalties on RTOs/ISOs as traditional transmission providers is not comparable treatment because even a small penalty could have a great financial impact on an RTO/ISO that would be disproportionately more punitive than the same penalty on a traditional transmission provider.

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<sup>102</sup> See NYISO Initial Comments at 42.

<sup>103</sup> Order No. 2023 at P 999.

<sup>104</sup> See *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010) (“The court will not find a Commission determination to be unduly discriminatory if the entity claiming discrimination is not similarly situated to others.”); *Complex Consol. Edison Co. of N.Y. v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999) (“[T]o show undue discrimination [under the Natural Gas Act], the petitioner must demonstrate that the two classes of customers are similarly situated for purposes of the rate.”).

Identical penalties do not incentivize RTOs/ISOs to meet deadlines “in the same manner” as traditional transmission providers because the same penalties are harsher when applied to the RTO/ISO. It is arbitrary and capricious for Order No. 2023 to ignore this unduly discriminatory impact. Order No. 2023’s assertion that “RTOs/ISOs do not face differing or greater burdens that warrant different treatment than non-RTO/ISO transmission providers” because, “[t]he *pro forma* LGIP applies to all transmission providers, RTO/ISO and non-RTO/ISO alike”<sup>105</sup> is conclusory and does not provide reasoned support for Order No. 2023’s determination.

*vi. Eliminating the Reasonable Efforts Standard Is Arbitrary and Capricious*

The NYISO and many other commenters argued that it was premature and unreasonable to abandon the reasonable efforts standard.<sup>106</sup> The NYISO’s other requests for rehearing in this filing are not logically dependent on the Commission returning to the reasonable efforts standard, *i.e.*, the Commission could conceivably remedy the RTO/ISO penalty cost recovery problem through other means. At the same time, the NYISO respectfully submits that Order No. 2023 arbitrarily and capriciously eliminated the reasonable efforts standard without reasonably addressing the arguments or adequately explaining its responses to them.

There is extensive evidence in the record demonstrating that the information that the Commission relied upon to justify eliminating the reasonable efforts standard was irrelevant or outdated. For example, Order No. 2023 relies in part on data concerning missed study deadlines in RTO/ISO regions that have been contending with unprecedented numbers of new interconnection requests and/or have recently made substantial improvements to their

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<sup>105</sup> Order No. 2023 at P 997.

<sup>106</sup> *See, e.g.*, NYISO Initial Comments at 31; MISO Initial Comments at 71. *See also* SPP Initial Comments at 13; MISO TOs Initial Comments at 14-16; Dominion Energy Services, Inc. Initial Comments at 34; PJM Reply Comments at 2.

interconnection procedures that are not reflected in earlier metrics.<sup>107</sup> It is not reasoned decision-making for Order No. 2023 to assume that the reasonable efforts standard was, or would continue to be, the driving force behind missed deadlines under these circumstances. Similarly, the Commission has not adequately addressed, or explained its response to, arguments that study deadlines themselves are unreasonable. It is not reasoned decision-making to attempt to solve the problem of unreasonable study deadlines by changing the rules so that transmission providers will be punished for missing the deadlines.

Finally, even assuming that it could be reasonable to conclude that some transmission providers need stronger incentives than the reasonable efforts standard provides, it is still not reasoned decision-making to assume that the same is true for all transmission providers. The Commission should have recognized that there is a strong support among state regulators in New York for retaining some form of the reasonable efforts standards and that doing so would not impede the state's clean energy policies.<sup>108</sup>

*vii. The Commission Should Clarify that it Will Allow Penalty Waivers When a Transmission Provider Is Not Solely Responsible for a Study Delay*

Order No. 2023 stated that transmission providers will not be allowed “to directly assign study penalties to interconnection customers even when customers are to blame for a late study.” Instead, the Commission will consider waiving penalties in that scenario.<sup>109</sup> However, the Commission is silent on the question of whether it would entertain penalty waiver requests in other circumstances. For example, Order No. 2023 did not address whether the Commission

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<sup>107</sup> See Order No. 2023 at PP 40, 1012.

<sup>108</sup> See NYISO Reply Comments at 3-4.

<sup>109</sup> See Order No. 2023 at P 993.



would consider waiving a penalty if it were shown that interconnection customers substantially caused it with transmission owners and/or an RTO /ISO playing comparatively smaller roles.

The Commission should clarify whether it will be receptive to penalty waiver requests in this and other potentially likely scenarios. Specifically, the Commission should clarify that it will allow penalty waiver requests in cases where identifying the extent to which different parties are to blame for a late study would be difficult and time-consuming. There is no reason to only allow waivers when an interconnection customer is found to be solely responsible for a missed deadline. Moreover, when multiple parties played a role in delaying a study, any potential incentive effect of penalizing any one of them will be diminished. It would also generally be a better use of all parties', and the Commission's, limited time and resources to avoid complex contested appeals by simply allowing for waivers to avoid the need for potentially complex penalty appeal proceedings. Allowing for waivers would also help to correct Order No. 2023's erroneous assumption that RTOs/ISOs will be able to automatically assign penalty costs to transmission owners without controversy.<sup>110</sup>

The Commission should also clarify that reasonable penalty waiver requests will be compatible with its traditional four-prong waiver analysis. For example, the Commission should specify that if a study delay impacts numerous customers that will not mean that a waiver request would be denied because it is "not limited in scope." More generally, clarification that penalty waiver requests are not disfavored is needed given the language in Order No. 2023 implying that even a case in which an interconnection customer is shown to have caused a delay might somehow not amount to a "compelling case" for a waiver.

*viii. The Commission Should Clarify that RTOs/ISOs May Include Study Penalty Cost Recovery Proposals in their Individual Compliance Filings*

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<sup>110</sup> See Section B.iv above.

Order No. 2023 states that RTOs/ISOs may “submit an FPA section 205 filing to propose a default structure for recovering study delay penalties and/or make individual FPA section 205 filings to recover the costs of any specific study delay penalties.”<sup>111</sup> This approach is intended to provide “discretion for RTOs/ISOs,” to “reduce the administrative burden associated with study delay penalty cost recovery,” and to “allow RTOs/ISOs the flexibility to craft rules that work for their region.”<sup>112</sup>

The Commission should clarify that “default structure” penalty cost recovery proposals may be included in Order No. 2023 compliance filings in addition to FPA section 205 filings. Unlike most Commission-jurisdictional transmission providers, the NYISO must obtain super-majority stakeholder approval to submit tariff revisions under section 205. This restriction might be interpreted to prevent the NYISO from filing a default structure proposal without stakeholder consent. The NYISO believes that other RTOs/ISOs are similarly situated. Therefore, if the Commission’s intent was that RTOs/ISOs may only propose “default structure” recovery mechanisms under FPA section 205, then some RTOs/ISOs would be prevented from filing such proposals if a minority of their stakeholders opposed them.

The NYISO does not believe that Order No. 2023’s references to RTOs/ISOs filing default penalty cost recovery proposals under section 205 could reasonably be read as barring such proposals from being included in Order No. 2023 compliance filings. The Commission has traditionally afforded RTOs/ISOs considerable flexibility regarding the scope of compliance filings made in response to major new rules. This has been particularly true in the interconnection context where independent entity variations are available. Allowing RTOs/ISOs to address penalty cost recovery in their compliance filings would also be consistent with Order

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<sup>111</sup> Order No. 2023 at P 994. *See also* Order No. 2023 at PP 996, 998, 999, 1016.

<sup>112</sup> *Id.*

No. 2023’s statements that the RTOs/ISOs should have “discretion,” “flexibility,” and be able to reduce “administrative burdens” in this area. Moreover, Order No. 2023 presents the “default structure” filing option as a due process safeguard. But any such protection would be substantially weakened if stakeholders could block such filings. Finally, it would be unduly discriminatory for the Commission to leave RTOs/ISOs that need stakeholder approval to file tariff revisions with less ability to recover study penalty costs than those that do not. Order No. 2023 does not offer any justification for such disparate treatment.

Nevertheless, to eliminate any possible uncertainty, the Commission should clarify that Order No. 2023’s reference to section 205 filings does not preclude RTOs/ISOs from including default penalty cost recovery tariff provisions in their individual Order No. 2023 compliance filings.

**C. Requests for Rehearing and Clarification Regarding Requirements for Cluster Request Window and Customer Engagement Window**

*i. Timeframe for Correcting Deficiencies in Interconnection Requests*

Order No. 2023 establishes that an interconnection customer must submit its interconnection request during the 45-day Cluster Request Window.<sup>113</sup> The transmission provider is required to notify the interconnection customer within five (5) Business Days of any deficiencies in its interconnection request.<sup>114</sup> The interconnection customer must then provide the additional information needed to constitute a valid request within the shorter of: (i) ten (10)

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<sup>113</sup> Revised Pro Forma LGIP at 3.4.1.

<sup>114</sup> *Id.* at 3.4.4.

Business Days after receipt of notice, or (ii) the close of the Cluster Request Window, or be subject to withdrawal.<sup>115</sup>

The NYISO requests that the Commission confirm that the interconnection customer is limited to this one 10-Business Day opportunity (or shorter at the end of the request window) to cure a deficiency in its application – *i.e.*, one bite of the apple. The Commission should further confirm that it did not intend to require the transmission provider to issue a second deficiency notice even if time allowed for such notice in the request window and that, if the interconnection customer fails to fully cure its application within its single cure period, its application will be withdrawn.

The NYISO notes that Section 3.4.4 of the Commission’s revised *pro forma* LGIP separately provides that: “At any time, if Transmission Provider finds that the technical data provided by Interconnection Customer is incomplete or contains errors, Interconnection Customer and Transmission Provider shall work expeditiously and in good faith to remedy such issues.” The Commission should clarify that this language is not intended to extend the time period by which an interconnection customer must address deficiencies for the transmission provider’s acceptance of a valid, complete interconnection request, but instead is simply intended to permit the transmission provider and interconnection customer to address any minor issues that may be discovered later in the interconnection process, subject to applicable deadlines. To clarify this, the NYISO proposes the following additional language for Section 3.4.4 of the Pro Forma LGIP, which addition is italicized:

At any time, if Transmission Provider finds that the technical data provided by Interconnection Customer *in an Interconnection Request that Transmission Provider has determined to be a valid request* is incomplete or contains errors, Interconnection Customer and Transmission Provider shall work expeditiously and in good faith to remedy such issues.

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<sup>115</sup> *Id.* at 3.4.4.

The NYISO also proposes that this sentence be relocated to the end of Section 3.4.4 to avoid any confusion concerning the application of this language.

In addition, the Commission should confirm that the transmission provider may complete its determination that an interconnection request is valid into the Cluster Engagement Window, including assessing any updated information provided by the interconnection customer within its permitted deficiency cure period in the Cluster Request Window. The Commission should also confirm that the transmission provider is not required to permit interconnection customers to address any further deficiencies identified in the Cluster Engagement Window. Further, the Commission should confirm that if the transmission provider determines in the Customer Engagement Window that interconnection customer's updated interconnection request remains deficient and is not valid, the transmission provider may withdraw the project upon such determination. In particular, the NYISO is unclear concerning the Commission's statement in Paragraph 234 that appears to reject withdrawals for interconnection requests that are not deemed valid until the close of the Customer Engagement Window. This statement is inconsistent with the Commission's requirements to not permit interconnection customers to cure deficiencies during the Customer Engagement Window and to limit participation in the Scoping Meeting during that window to only customers "whose valid Interconnection Requests were received in the Cluster Request Window."<sup>116</sup>

*ii. Anonymizing Cluster Participant Information*

The NYISO requests rehearing of the Commission's addition of a requirement that transmission providers post an anonymized list of the projects eligible to participate in the Cluster Study during the Customer Engagement Window. The requirement that the list be

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<sup>116</sup> *Id.* at Section 3.4.5.

anonymized creates another administrative burden on the transmission provider for which the Commission has not provided a reasonable basis and could result in the unequal public disclosure of certain information to only a subset of developers. It also would represent a step backwards in the level of transparency that the NYISO currently provides its stakeholders and developers.

The Commission has not provided support for this anonymity requirement, aside from a general assertion that such requirement is appropriate “to reduce opportunities for developers to gain competitive advantage over others before interconnection requests have been finalized and accepted by the transmission provider.”<sup>117</sup>

The proposed tariff requirement for the list in Section 3.4.5 provides that the transmission provider will post “a list of Interconnection Requests for that Cluster.” These interconnection requests would presumably already have been determined to be valid and finalized at that point to be considered part of the cluster. The Commission has not provided a description of any means by which publicly identifying the developers of projects with valid interconnection requests would provide the developer or other parties with a competitive advantage.

In addition, for certain regions such as NYISO, the transmission provider is currently required by its OATT to include information concerning valid interconnection requests on its publicly-posted interconnection queue, including the identity of the developer and the status of the request.<sup>118</sup> The Commission’s proposed requirement would, therefore, require a further administrative step for the NYISO to have to conceal certain information in its publicly posted queue, including the developer name and/or the status of the project. In addition, the

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<sup>117</sup> Order No. 2023 at P 237.

<sup>118</sup> NYISO OATT Attach. X Section 30.3.4.1.

transmission provider would have to take additional steps to maintain the projects' anonymity, such as masking information in any other public communications.

Further, Order No. 2023 requires that the transmission provider conduct a group scoping meeting during the Customer Engagement Window. Accordingly, attendees to the scoping meeting will be aware of the other cluster participants regardless of what information is publicly posted. Even if developer names are not provided during such scoping meeting, many developers in a region are aware of the employees of other developers in that region (and in some cases have worked for such other developers). Accordingly, anonymity of developer names will not mask the identity of the underlying developers from other cluster participants but would simply give them an information advantage over other developers. This disclosure would occur even if they executed a non-disclosure agreement.

Finally, in many cases, such information would be public in any case. This could occur by a developer posting its projects on its website, or by a developer participating in public request for proposals, permitting processes, Commission submissions, or other federal, state, or local proceedings. Moreover, the NYISO's publicly posted queue is often used as an important resource in these proceedings.

#### **D. Rehearing and Clarifications Regarding Withdrawal Penalty Requirements**

##### *i. The Multi-Prong Withdrawal Penalty Structure Is Overly Complicated and Will Be Administratively Burdensome to Implement to the Detriment of Timely Study Work*

The NYISO supports the use of more stringent entry milestones and withdrawal penalties for interconnection customers, including requiring that interconnection customers have more money at risk earlier in the process, to disincentivize speculative projects and to permit transmission providers to focus limited resources on timely studying those projects prepared to proceed. However, the Commission's withdrawal penalty structure adopted in Order No. 2023

does not reflect reasoned decision-making as it is unnecessarily complicated and establishes significant new administrative burdens on the transmission provider that are at odds with the intent of the final rule to enable transmission providers to more efficiently and timely process interconnection requests.

The Commission's approach attempts to accomplish too much through the penalty regime, establishing multiple pathways for the use of the collected withdrawal penalties to offset both study costs and net increases in upgrade costs for shared upgrades. The Commission's framework substantially deviates from its straightforward proposal in the NOPR in which the transmission provider would solely use the collected penalties to offset study costs for the cluster. The Commission has not provided a reasonable basis for expanding this process to insert an additional layer to address offsetting increases in network upgrade costs for shared upgrades. This additional layer of the process takes what would be a relatively simple process for the transmission provider to implement, which distribution rules are captured in a single paragraph of tariff language in the NOPR, and expands these rules and administrative requirements into an approximately six (6) tariff page-long series of detailed requirements. These new requirements will require the transmission provider to keep track of multiple penalty streams tied to each withdrawing developer, of which there will likely be a substantial number, across multiple studies while also requiring the performance of extensive analysis concerning the impact of the withdrawal of each of these projects on the remaining projects.

The NYISO agrees that using collected penalty costs to offset either incurred study costs or increases in network upgrade costs for shared upgrades would represent a valuable use of such penalties. However, the Commission should select one approach that can be reasonably implemented without requiring the commitment of significant additional resources or,



alternatively, should permit each transmission provider to determine how such collected penalty costs can be best put to use in its region.

If the Commission elects to retain its withdrawal penalty approach, the NYISO requests rehearing and/or clarification of certain elements of these requirements as detailed below.

*ii.. The Required Penalties Cannot Exceed the Amount Secured by Transmission Provider*

The NYISO Tariffs do not establish credit requirements for interconnection customers. Accordingly, the NYISO has sought in its interconnection procedures to align study deposits with a developer's actual study cost responsibility to avoid exposure to unpaid study costs. The Commission should clearly establish that withdrawal penalties cannot exceed the dollar amount secured by transmission providers. Transmission providers cannot be responsible for, and should not have to incur the administrative resource and expense of, having to hunt down or to enter into litigation with withdrawn interconnection customers to obtain any withdrawal penalties that they fail to pay. Transmission providers should also not be required to pass on any gaps in uncollected penalty amounts to their Market Participants.

As an example, per the Order No. 2023 requirements, the interconnection customer is responsible for providing a study deposit to the transmission provider with the submission of its interconnection request.<sup>119</sup> If such interconnection customer withdraws during the Cluster Study, it will be charged as a withdrawal penalty two times the actual allocated costs of the studies performed for that interconnection customer.<sup>120</sup> The possibility exists that the withdrawal penalty amount (2x actual costs) would be larger than the study deposit provided by

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<sup>119</sup> Revised Pro Forma LGIP at 3.1.1.1, 3.4.2.

<sup>120</sup> *Id.* at 3.7.1.1.

the interconnection customer in which case the transmission provider would have unsecured cost exposure to certain of these penalty amounts that it is required to pay out.

The Commission, therefore, should modify the withdrawal penalty rules: (i) to permit the transmission provider to require increases in deposits from interconnection customers when it becomes evident that the secured amount is not sufficient to offset penalty amounts and/or (ii) to establish that, in the event of a gap between the secured amount and withdrawal penalties, the transmission provider is not required to pay out any uncollected amount under the penalty distribution rules or to recover such difference from its market participants.

*iii.. Withdrawal Penalty Materiality Threshold*

The Order No. 2023 withdrawal penalty requirements establish certain exceptions to an interconnection customer's responsibility for withdrawal penalties, including in cases in which the transmission provider determines that "the withdrawal does not have a material impact on the cost or timing of any Interconnection Request with an equal or lower Queue Position."<sup>121</sup> The Commission should eliminate this material impact threshold exception, which is inconsistent with the Commission's rationale for the withdrawal penalties, is not well defined, and will create an additional administrative, time-intensive burden on transmission providers.

As detailed in Order No. 2023, the purpose of the withdrawal penalties is to "remedy the issues regarding speculative interconnection requests, including study delays from overcrowded interconnection queues and the harms to the function of the interconnection queue that occur when interconnection customers withdraw from the interconnection queue at various stages of the study process."<sup>122</sup>

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<sup>121</sup> *Id.* at 3.7.1.

<sup>122</sup> Order No. 2023 at P 781.

The withdrawal penalty rules should align with this purpose. An interconnection customer's withdrawal at the conclusion of a study phase made use of the transmission provider's limited time and resources to the detriment of other interconnection customers that are ready to proceed and the overall time for completing the study phase. This harm occurs regardless of whether or not the actual study results indicate that the withdrawal of its project has a material impact on the cost or timing of other interconnection requests.

Further, the Commission neither defined, nor provided guidance, concerning what constitutes a material impact, leaving it instead to the transmission provider to determine.<sup>123</sup> As the Commission has indicated, it is likely that upcoming queue clusters will consist of a substantial number of interconnection requests.<sup>124</sup> It creates significant inefficiencies and administrative burdens to require transmission providers to assess each withdrawing project—which could potentially be dozens—at each study phase and determine on a case-by-case basis what individual impact that project has on the cost and timing of any interconnection request with an equal or lower queue position. This would require reviewing such impacts for not only all other projects participating in the cluster, but also all other lower queued large and small generating facilities in a transmission provider's interconnection queue. This time intensive analysis required upon each withdrawal is counter to one of the primary goals of Order No. 2023 - to increase efficiencies in the interconnection process.<sup>125</sup>

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<sup>123</sup> *Id.* at P 789.

<sup>124</sup> *See, e.g.*, Order No. 2023 at PP 38, 41-42.

<sup>125</sup> The NYISO's Class Year Study process currently requires that a developer may only proceed if it accepts the cost allocation for upgrades identified for its project and posts full security for such upgrades. The upgrades that are accepted are included in the base case for subsequent interconnection studies. The security that the developer posts in the Class Year Study for an upgrade is subject to forfeiture if its project withdraws and other developers are relying on the construction of the upgrade. *See generally* NYISO OATT Attach. S Section 25.8.5. The NYISO, therefore, only currently assesses the impacts of a withdrawing customer for the limited subset of customers that have completed the Class Year Study, accepted their cost allocation, posted security, and subsequently withdraw. The Commission's proposed materiality determination would significantly expand the

*iv.. Additional Clarifications*

The NYISO requests that the Commission make the following additional clarifications concerning the implementation requirements for the withdrawal penalty requirements in the Pro Forma LGIP.

First, the NYISO requests that the Commission confirm or otherwise clarify the timeframes for the specific withdrawal penalty application process steps from the date on which all interconnection customers in the Cluster have either withdrawn or been deemed withdrawn, executed a Large Generator Interconnection Agreement (“LGIA”), or requested the LGIA be filed unexecuted. The NYISO understands the transmission provider to have the following responsibilities within either 30 or 60 calendar days of this start date. The NYISO understands the transmission provider must within 30 days: (i) determine the use of the collected withdrawal penalty funds for study costs, (ii) refund study costs, (iii) determine the use of any remaining collected withdrawal penalty funds for net increases to network upgrade costs, and (iv) provide an amended LGIA in the case of any offset of increases to network upgrade costs.<sup>126</sup> The NYISO further understands that the transmission provider must return any remaining security to interconnection customer within 60 calendar days. The NYISO requests that the Commission confirm these are the intended deadlines or clarify the actual deadlines for these responsibilities.<sup>127</sup>

Second, Section 3.7.1.2.1 of the Pro Forma LGIP indicates that the transmission provider must use the collected withdrawal penalties first “to fund studies conducted under the Cluster

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number of projects that the NYISO would have to assess to all withdrawing customers across most phases of the interconnection process and would require review of the impact of the withdrawn project on both the cost and timing of other interconnection requests.

<sup>126</sup> See Revised Pro Forma LGIP at 3.7.1.2.1, 3.7.1.2.4.

<sup>127</sup> See *id.* at 3.7.1.2.2.

Study Process.”<sup>128</sup> Cluster Study Process is defined to include all of the interconnection studies and re-studies.<sup>129</sup> However, Section 3.7.1.2.1 elsewhere describes distributing withdrawal

penalties only in the context of the Cluster Study. Specifically, this provision indicates:

“Distribution of Withdrawal Penalty funds within one specific Cluster Study for study costs shall not exceed the total actual Cluster Study costs.” The Commissions should clarify whether this tariff language was intended to apply solely to distribution of penalty funds for Cluster Study costs or for all of the interconnection studies – *e.g.*, Cluster Re-Studies and the Interconnection Facilities Study.

Third, the Commission should clarify whether the requirements in Section 3.7.1.2.2 of the Pro Forma LGIP for refunding any penalty amounts not used to offset study costs and net increases in upgrade costs are intended to be the same or different from the requirements for distributing such remaining penalty funds under Section 3.7.1.2.5.

Finally, given the complexity of this multi-stage process, the NYISO requests that the Commission provide an expanded version of the helpful example it provided in Paragraph 808 of Order No. 2023 that walks through the different potential variations of this process.

**E. Requests for Rehearing of Use of Operating Assumptions to Reflect Proposed Charging Behavior of Electric Storage Resources**

In Order No. 2023, the Commission required the transmission provider, at the request of an interconnection customer, to use operating assumptions in interconnections studies (for Energy Resource Interconnection Service and Network Resource Interconnection Service that reflect the proposed charging behavior of electric storage resources (whether stand alone, co-

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<sup>128</sup> See also Order No. 2023 at P 798.

<sup>129</sup> Revised Pro Forma LGIP Section 1 (“Cluster Study Process shall mean the following processes, conducted in sequence: the Cluster Request Window; the Customer Engagement Window and Scoping Meetings therein; the Cluster Study; any needed Cluster Restudies; and the Interconnection Facilities Study.”)

located generating facility, or part of hybrid generating facility) – *i.e.*, whether the interconnecting generating facility will or will not charge during peak load conditions – unless good utility practice, including applicable reliability standards, otherwise requires the use of different operating instructions.<sup>130</sup> The Commission should remove this requirement as it creates conflicts with market rules and adds a new complexity to interconnection studies at odds with the intent of the final rule to expedite such studies

In New York, the charging of Energy Storage Resources (“ESR”) is an important component of their participation in the NYISO-administered markets and can provide flexibility and robustness to grid operations at all times of the day. The NYISO does not prescribe the time periods when ESR can or cannot charge.<sup>131</sup> Grid or market conditions may make it desirable for ESRs to charge during peak demand hours and/or during the NYISO’s Peak Load Window.<sup>132</sup> For example, charging of ESRs during peak periods can allow the full capture of energy production during peak output of renewables such as solar generating facilities.

The NYISO’s market rules do not allow ESRs to dictate to the NYISO at the interconnection stage the limited periods during the day that they would only seek to charge. ESRs participating as Installed Capacity Suppliers are required to bid, schedule, and/or declare to

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<sup>130</sup> Order No. 2023 at P 1509.

<sup>131</sup> An ESR that supplies Installed Capacity is required to Bid Energy, schedule a bilateral transaction, or notify the NYISO of an outage (“Bid/Schedule/Notify”) for each hour of a Day-Ahead Market (“DAM”) Day. The specific obligation depends on the ESR’s capability. An ESR with an Energy Duration Limitation (*i.e.*, an ESR that is not capable of supplying Energy in each hour of the day due to a run-time limitation) is required to (i) Bid/Schedule/Notify at least the injection portion of its operating range during the NYISO-defined Peak Load Window and (ii) Bid or notify the NYISO of an outage for at least the withdrawal portion of its operating range in each hour that is outside the Peak Load Window. An ESR is not prohibited from offering to withdraw Energy during the Peak Load Window or from offering to inject Energy outside the Peak Load Window. An ESR that does not have an Energy Duration Limitation is required to Bid/Schedule/Notify its full withdrawal to injection offer curve for each hour of the Day-Ahead Market Day. NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) Section 5.12.7.

<sup>132</sup> NYISO Services Tariff Section 5.12.14.

be unavailable their entire withdrawal operating range during the Day-Ahead Market.<sup>133</sup>

Installed Capacity Suppliers that do not comply with the NYISO's Day-Ahead Market bidding rules may be subject to financial penalties.<sup>134</sup> Permitting each ESR to specify the circumstances when the facility will operate is not consistent with the NYISO-administered Energy and Installed Capacity market framework.

In addition, an ESR's provision of individual operating assumptions will add significant new complexity to interconnection studies and increase the time required to complete such studies, which is at odds with the intent of the final rule to expedite such studies by establishing firm deadlines subject to penalties. A developer providing individual operating assumptions will necessitate that the NYISO address additional variations of study assumptions and cases in its studies that would require building out additional base cases for each individual scenario. For example, the NYISO's current interconnection study process would normally use three standardized sets of base cases – *e.g.*, the summer peak load base case, the winter peak load base case, and the spring light load base case – to determine the reliability of various system conditions prior to including proposed projects and to establish the baseline of the system. The NYISO then adds proposed projects to these pre-project base cases to assess the incremental impacts of proposed projects on various system conditions to the baseline system and to identify necessary upgrades for proposed projects to reliably interconnect to the system.<sup>135</sup>

Requiring a transmission provider to consider the individual operating assumptions of each ESR project would require that it create additional off-peak system base cases that are

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<sup>133</sup> For ESRs that only receive Energy Resource Interconnection Service, there is no Day-Ahead Market bidding obligation. Currently, most ESRs are also Installed Capacity Suppliers, and the NYISO expects that the majority of future ESRs will also be Installed Capacity Suppliers.

<sup>134</sup> See Services Tariff Section 5.12.12.2.

<sup>135</sup> See Nguyen Affidavit at P 12.

tailored for each individual project as the standardized set of system base cases may not represent the system conditions where the developer of the ESR project opts to charge. Accordingly, any assumptions about the operation of storage in interconnection studies must be consistent with how storage is expected to operate under existing market rules and should be consistent across proposed storage resources.

### III. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

In accordance with Rule 713(c),<sup>136</sup> the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of Order No. 2023:

1. Order No. 2023's 150-day interconnection study time frames and interconnection study penalty regime are arbitrary and capricious and not based on substantial evidence under the APA as applied to not-for-profit RTOs/ISOs because the Commission did not adequately consider, address, or explain its responses to arguments and evidence in the record and did not make reasoned decisions based on substantial evidence, including but not limited to by establishing study timeframes that have no basis in record evidence. *See* 5 U.S.C. § 706(2); *see, e.g., Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 207-10 (D.C. Cir. 2011); *Am. Gas Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001).
2. Order No. 2023's strict liability penalty regime is arbitrary and capricious, not based on substantial evidence, and inconsistent with due process requirements because the Commission unreasonably presumed that financial penalties are necessary to incentivize all transmission providers to meet study deadlines without considering extensive evidence that the deadlines themselves are unreasonable, especially in the NYISO's and other similarly situated RTO/ISO regions. *See, e.g., United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 340 (1956); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 582 (1981); *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 531-33 (2008); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1968).
3. Order No. 2023's strict liability penalty regime is arbitrary and capricious and not based on substantial evidence as applied to not-for-profit RTOs/ISOs because the Commission: (1) did not adequately consider, address, or respond to extensive

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<sup>136</sup> 18 C.F.R. § 385.713(c).



evidence demonstrating that the NYISO and similarly situated RTOs/ISOs cannot pay penalties without recovering the costs from customers in some form and that being unable to recover these costs would threaten their financial viability; (2) appears to be relying on an assumption that RTOs/ISOs may recover penalty costs from non-transmission customers without explaining how such recoveries would be consistent with the Commission's penalty precedent and not unduly discriminatory; and (3) did not adequately consider, address, or respond to extensive evidence demonstrating that imposing strict liability penalties on RTOs/ISOs would likely create adverse incentives, have adverse consequences, and impede the Commission's own policy objectives.;. *See* 5 U.S.C. § 706(2); *see, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-516 (2009); *Canadian Ass'n of Petroleum Producers*, 254 F.3d at 299; *New England Power Generators Association, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018); and *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) (reaffirming that the Commission may not depart, without reasoned explanation from its precedents).

4. Order No. 2023 is arbitrary and capricious and not based on substantial evidence because the Commission did not adequately consider, address, or explain its response to the NYISO's and other commenters' arguments that imposing study delay penalties would jeopardize reliability and create perverse incentives for transmission providers to prioritize meeting deadlines over the completeness and quality of studies. *See supra* specification 1 (citing reasoned decision-making precedents).
5. Order No. 2023's strict liability study penalty regime is arbitrary and capricious and not based on substantial evidence because it would impose penalties on RTOs/ISOs regardless of whether the RTOs/ISOs are responsible for study delays in favor of presuming that RTOs/ISOs are to blame. Order No. 2023 did not adequately consider, address, or respond to evidence and arguments demonstrating that the complex and collaborative nature of interconnection studies in RTO/ISO regions means that RTOs/ISOs will often not be to blame. The Commission arbitrarily and capriciously relied on inapposite comparisons of its strict liability study penalty regime, to reliability penalties, transmission study penalties, and "traffic ticket" penalties, which are distinguishable for multiple factual reasons. *See supra* specification 1.
6. Order No. 2023's strict liability penalty regime as applied to not-for-profit RTOs/ISOs lacks adequate due process safeguards against excessive and unjust penalties. *See, e.g.,* United States Constitution, Fifth and Fourteenth Amendments; *Revised Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 at P 222 (2008); *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 50-71 (2008) at 51. Order No. 2023's new appeals process is not an adequate due process safeguard because it wrongly places the burden on RTOs/ISOs to demonstrate they are not at fault for missing deadlines and provides no guidance with regards to how transmission providers may show "good cause" to overcome this presumption of fault. Similarly, it is not reasoned

decision-making for Order No. 2023 to assert that allowing RTOs/ISOs to make section 205 filings or assign penalties to transmission owners that conduct studies will ameliorate RTO/ISO cost recovery concerns given that section 205 filings may be contested and rejected and most interconnection studies are collaborations between RTOs/ISOs and their transmission owners. Finally, the Commission did not exercise reasoned decision-making when it eliminated the *force majeure* exception and adopted identical grace period and “mutual agreement extension” rules for all transmission providers despite evidence that they would not be meaningful safeguards for at least some transmission providers. *See supra* specification 1, specification 2.

7. Order No. 2023 is unduly discriminatory because it imposes identical penalties on not-for-profit RTOs/ISOs, who do not have guaranteed means of absorbing penalty costs, as it does on traditional transmission providers, who do, without considering the commensurately greater impact on RTOs/ISOs. *See* 16 U.S.C. § 824e; *ConEd. Inc. v. FERC*, 45 F.4<sup>th</sup> 265, 282 (D.C. Cir. 2022); *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010); *Complex Consol. Edison Co. of N.Y. v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999); *Ala. Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 28 (D.C. Cir. 1982).
8. Order No. 2023 arbitrarily and capriciously declined to provide RTOs/ISOs flexibility to propose and set their own study deadlines that better reflect the needs of their regions and instead chose to impose generic national standards for deadlines and penalties. The Commission should revise its holding on rehearing or, in the alternative, clarify and specify that Order No. 2023 was not intended to prevent RTOs/ISOs from proposing region-specific study deadlines. *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 66-67 (D.C. Cir. 2014); *Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 687 (D.C. Cir. 2000); *Assoc. Gas Distribs. v. FERC*, 824 F.2d 981, 1019 (D.C. Cir. 1987); *Wis. Gas. Co. v. FERC*, 770 F.2d 1144, 1151, 1168 (D.C. Cir. 1985).
9. Order No. 2023 arbitrarily and capriciously relies on irrelevant and outdated evidence—not the substantial evidence required by APA section 10(e)(2) and FPA section 313(b)—to justify the elimination of the reasonable efforts standard. The Commission also did not engage in reasoned decision-making by eliminating the reasonable efforts standard for all regions, despite the record evidence that eliminating the reasonable efforts standard was unnecessary. *See* 5 U.S.C. § 706(2); 16 U.S.C. § 824e; 16 U.S.C. § 825l(b); *supra* specification 8 (citing administrative law precedents pertaining to rulemakings).
10. Order No. 2023 is ambiguous regarding whether or when the Commission will entertain penalty waiver requests. The Commission should clarify its approach to penalty waivers and should permit penalty waiver requests in cases when identifying which party is at fault for a late study would be difficult. The Commission should also clarify that penalty waiver requests will be compatible with its traditional four-prong waiver analysis.

11. Order No. 2023 is ambiguous regarding whether “default structure” penalty cost recovery proposals may be included in Order No. 2023 compliance filings or whether those proposals are limited to FPA section 205 filings. The Commission should clarify that Order No. 2023 does not preclude RTOs/ISOs from including default penalty cost recovery tariff provisions in their individual Order No. 2023 compliance filings. In the alternative, the Commission should grant rehearing on this point because limiting certain RTOs’/ISOs’ ability to recover penalty costs to FPA section 205 filings that could be vetoed by stakeholders would be unduly discriminatory.
12. Order No. 2023’s withdrawal penalty structure does not reflect reasoned decision-making because it is unnecessarily complicated and imposes significant administrative burdens on transmission providers that are contrary to Order No. 2023’s goal of enabling transmission providers to more efficiently and timely process Interconnection Requests. Order No. 2023’s materiality threshold exception for withdrawal penalties also does not reflect reasoned decision-making as it is inconsistent with the rationale for the withdrawal penalties, is not clearly defined, and will impose a significant administrative burden on transmission providers. *See supra* specification 1.
13. Order No. 2023’s requirement that transmission providers anonymize the list of developers participating in a cluster does not reflect reasoned decision-making and is unduly discriminatory because there is no basis for the requirement in the record, and the requirement would result in unequal disclosure of developer information, would reduce transparency, and would impose a significant administrative burden on transmission provider. *See supra* specification 1.
14. Order No. 2023’s requirement that transmission provider must, at the interconnection customer’s request, use operating assumptions for proposed charging behavior of an electric storage resource is arbitrary and capricious and does not reflect reasoned decision-making because the Commission did not adequately consider, address or explain its responses to arguments and evidence in the record or make reasoned decisions based on the conflicts between this requirement and market rules and the substantial additional complexity this requirement will create for interconnection studies that are contrary to Order No. 2023’s goal of enabling transmission providers to more efficiently and timely conduct interconnection studies. *See supra* specification 1.

#### **IV. DOCUMENTS SUBMITTED**

The NYISO submits the following document with this request for rehearing and clarification:

- Affidavit of Thinh T. Nguyen (Attachment I).

## V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant rehearing, and/or clarification, of the Order No. 2023 determinations that are specified above.

Respectfully submitted,

/s/ Sara B. Keegan  
Sara B. Keegan  
Angela J. Sicker

/s/ Ted J. Murphy  
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August 28, 2023

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	Douglas Roe	Eric Vandenberg

## Attachment I

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

<b>New York Independent System Operator, Inc.</b>	) ) )	<b>Docket No. RM22-14-001</b>
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**AFFIDAVIT OF THINH T. NGUYEN**

Mr. Thinh T. Nguyen declares:

1. I have personal knowledge of the facts and opinions herein and if called to testify could and would testify competently hereto.

**A. Purpose of this Affidavit**

2. I submit this affidavit in support of NYISO’s Request for Rehearing and Clarification petition in Docket No. RM22-14 concerning the Commission’s final rule on Improvements to Generator Interconnection Procedures and Agreements (“Order No. 2023”). The purpose of this affidavit is to detail the steps that the NYISO must perform for a system impact study and facilities study and the timeframe for performing such work.

**B. Background and Introduction**

3. My name is Thinh T. Nguyen. I am the Senior Manager of Interconnection Projects for the New York Independent System Operator (“NYISO”). My business address is 10 Krey Boulevard, Rensselaer, NY 12144.
4. I have held this position since March 2018. Prior to that, I was the Manager of Interconnection Projects for the NYISO since November 2015. I also have held other positions at the NYISO including Supervisor of System Modeling team, TCC Senior Market Operation Engineer, Senior Planning Engineer, and Planning Engineer since the inception of the NYISO in November 1999. Prior to the NYISO, I held a Planning Engineer position with the NYISO’s predecessor, the New York Power Pool, for over a year and an Instruments and Controls Electrical Engineer position with Westinghouse Machinery Apparatus Operation for more than two years. I also received a Master of

Engineering from the Rensselaer Polytechnic Institute, a Master of Business Administration from the College of St. Rose, and a Bachelor of Science in Electrical Power Engineering from the Rensselaer Polytechnic Institute.

5. One of my primary responsibilities as the Senior Manager of Interconnection Projects at the NYISO is to ensure that the interconnection studies evaluate the reliability impacts on the New York State Transmission System of proposed interconnections of generation, load, or transmission facility development or expansion projects. Under the NYISO interconnection procedures, Interconnection Customers who propose to interconnect to the New York State Transmission System must notify the NYISO of their proposals by submitting an Interconnection Request. This includes providing project information and modeling data. The NYISO evaluates proposed projects through various technical studies to analyze the project-specific impacts to the New York State Transmission System, to identify upgrades in order for the proposed projects to reliably interconnect the transmission system, and to appropriately allocate the costs of upgrades to proposed projects based on their impact.
6. Based on this experience, I am aware of the efforts and time required to complete the interconnection studies to ensure reliability and to determine cost responsibility for projects seeking to connect to the New York State Transmission System.

**C. Timing and Tasks Involved in Completing Individual System Reliability Impact Studies**

7. The NYISO's performance of any interconnection study requires coordination among the NYISO, Connecting Transmission Owner(s) ("CTO"), the Interconnection Customer, and, if applicable, an Affected Transmission Owner or Affected System. Key steps and coordination are highlighted below and listed in Table 1.
8. The scope of a system impact study for a proposed project can consist of: (i) a short circuit analysis, (ii) a stability analysis, (iii) a steady-state analysis, and (iv) any other applicable reliability analyses that are required to satisfy reliability requirements. These reliability requirements could include the requirements of the North American Electric Reliability Corporation ("NERC"), Northeastern Power Coordinating Council

(“NPCC”), New York State Reliability Council (“NYSRC”), Transmission Owners, and, if applicable, Affected System(s).

9. To complete a study with this scope, the NYISO must first obtain accurate modeling data from an Interconnection Customer, which includes the project’s proposed point of interconnection. In the NYISO’s experience, this effort takes several weeks to several months. This timeline widely varies and can take a longer period of time due to: (a) discrepancies between the information provided by the Interconnection Customer in its application versus the data modeling information that it provides, or (b) unworkable model(s) provided by the Interconnection Customer. The NYISO must address this through an iterative process with the Interconnection Customer to obtain the correct information to correctly model the representation of the proposed project for purposes of performing the analyses and determining its impact on the system.
10. The NYISO also works with the CTO and the Interconnection Customer to understand where the proposed point of interconnection (“POI”) is located to develop a preliminary conceptual breaker-level one-line diagram that would accommodate the proposed project. Based on the preliminary conceptual breaker-level one-line diagram, the applicable CTO will assess whether the proposed POI could be physically feasible. If the CTO determines that the proposed POI is not feasible, the CTO may work in conjunction with the Interconnection Customer and/or the NYISO to determine an alternative proposed POI within the same substation if that is possible to accommodate the proposed project. This effort could also take several weeks to several months depending on the complexity of the proposed POI. This also can result in an iterative process to obtain an acceptable conceptual breaker-level one-line diagram in which the proposed project could be physically feasible. This step cannot be skipped because the location of the POI is a critical step in the study process for evaluating the reliability impacts of the proposed project on the New York State Transmission System.
11. Once an Interconnection Customer agrees to the study scope and selects a POI, the NYISO works collaboratively with the CTO(s) to build applicable study base cases and the associated auxiliary study files (e.g., monitoring, contingency, and sub-system



files for steady-state and PSAS files for stability) for proposed projects to conduct the required analyses to meet all applicable reliability standards of the NERC, NPCC, NYSRC, and CTO(s). Depending on where the proposed POI is located, some CTOs would also need the short circuit base cases prior to the commencement of a study to determine the configuration of the POI to meet the CTO's planning design criteria. This information is required for the CTO to determine whether a proposed project needs to connect via a direct-tap to a transmission line or via the construction of a new three-breaker ring bus. For such cases, building the short circuit base cases results in front loading work prior to the design of the conceptual breaker one-line diagram and the physical construction feasible assessment of the proposed projects, which adds time to the overall process. This effort could also take several weeks to several months depending on the number of proposed projects that require this special attention for building, reviewing, and finalizing pre-and post-project short circuit base cases.

12. Additionally, the NYISO has to work collaboratively with the CTO(s) to build the pre-and post-project steady-state base cases that represent various system conditions (e.g., summer peak load, winter peak load, and spring light load conditions). These base cases will serve as the starting place for the NYISO and/or the CTO to conduct: (a) the bus flow analysis to determine whether or not proposed projects would require rebuilding some portion of, or an entire, substation and (b) the steady-state analysis to ensure proposed projects meet all applicable NERC, NPCC, NYSRC, and local Transmission Owner planning design criteria (e.g., N-0, N-1, N-1-1 and, if applicable, N-1-1-0). This effort could also take several months depending on the number of proposed projects and where the projects propose to be located, which could result in building various sets of base cases to capture the impacts of proposed projects.
13. In addition, if through the NYISO's application of its NYISO Minimum Interconnection Standard ("MIS"), the NYISO identifies violations that cannot be mitigated, the NYISO has to work collaboratively with the applicable CTO and/or the Interconnection Customer(s) to come up with upgrade solution(s) and select upgrade(s) that constitute the least cost solution consistent with Good Utility Practice

and all Applicable Reliability Requirements. This process could also result in an iterative process where all applicable reliability analyses would need to be re-performed to ensure that, with the selected upgrade(s), the proposed projects can be reliably interconnected to the system.

14. As alluded to above, the NYISO must also perform other reliability-based study efforts, which include adhering to Applicable Reliability Requirements.<sup>1</sup> The requirements include NERC, NPCC, NYSRC, and local Transmission Owner rules. NYSRC and local Transmission Owner rules are often more stringent than NERC and NPCC rules and require more effort to ensure they are met. For example, the NYISO must conduct the stability analysis, transfer analysis, deliverability analysis, short circuit analysis, NPCC/NYSRC bulk power system transmission facility testing analysis, sub-synchronous torsional interaction screening analysis, etc. The study effort level for each of these analyses are extensive and time consuming, similar to the effort in conducting the steady-state analysis. Please see below in Table 1 a task list that details the steps that the NYISO must typically take to conduct an individual system impact study.
15. In November 2022, the NYISO narrowed the scope of its SRIS to the absolute minimum analyses required without limiting the analyses critical to evaluating reliability impacts of proposed interconnections. It is too early to determine whether this effort will increase efficiencies throughout the entire NYISO interconnection study process, however, the time to complete SRISs has decreased in the first two quarters of 2023.

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<sup>1</sup> See NYISO OATT Section 25.1.2. Applicable Reliability Requirements include the NYSRC Reliability Rules and other criteria, standards, and procedures, as described in Section 25.6.1.1.1.1 of this Attachment S, applied when conducting the Annual Transmission Baseline Assessment and the Annual Transmission Reliability Assessment to determine the System Upgrade Facilities needed to maintain the reliability of the New York State Transmission System. The Applicable Reliability Requirements applied are those in effect when the particular assessment has commenced.

**Table 1: Task List Table for Individual System Impact Studies**

<b>Task No.</b>	<b>Task Description</b>
1	Create short circuit pre- and post- project base cases
2	Generate conceptual breaker-level one-line diagram
3	Physical feasibility assessment
4	Produce POI upgrade cost/construction timing estimation
5	Create steady-state Summer/Winter/Light Load pre- and post-project base cases
6	Create stability Summer/Light Load pre- and post-project base cases
7	Create deliverability Summer pre- and post-project base cases
8	Create Summer thermal transfer pre- and post-project base cases
9	Create Summer voltage transfer pre- and post-project base cases
10	Create Summer stability transfer pre- and post-project base cases
11	Create auxiliary study files (e.g., mon, con, and sub files for steady-state and PSAS files for stability) for pre- and post-project base cases
12	Bus flow analysis and, if applicable, provide upgrade cost estimation
13	Short circuit analysis and, if applicable, include minimum short circuit ratio analysis, individual breaker analysis and provide upgrade cost estimation
14	Steady-state (thermal/voltage) analysis, e.g., N-0, N-1, N-1-1 and, if applicable, N-1-1-0, and, if applicable, include the PAR impact analysis, the voltage deviation analysis, the reactive power capability analysis, extreme contingency assessment, and provide upgrade cost estimation
15	Thermal transfer analysis and, if applicable, provide upgrade cost estimation
16	Voltage transfer analysis and, if applicable, provide upgrade cost estimation
17	Stability analysis for both local and transfer base cases and determine critical clearing time and, if applicable, provide upgrade cost estimation
18	NPCC/NYSRC A-10 (BPS) Testing – build applicable stability and steady-state test base cases to conduct the analysis, and, if applicable, provide upgrade cost estimation
19	Deliverability analysis: Highway “no harm” test, Highway “net capacity” test, Other Interface “no harm” test, and Byway, and, if applicable, provide upgrade cost estimation
20	Sub-synchronous torsional interaction screening analysis

#### **D. The NYISO's Class Year Study - a Cluster Study with Both System Impact Study and Facilities Study Elements**

16. The NYISO has two decades of experience in conducting cluster studies, similar to the Cluster Study that the Commission describes in Order No. 2023. However, based on this experience, the study deadlines in Order No. 2023 do not align with the timeframes for conducting cluster studies.
17. As part of the NYISO's interconnection process, if a proposed project has been studied through an individual system reliability impact study (as discussed above) and meets other eligibility requirements, the project is eligible to enter a Class Year. This is the NYISO's final interconnection study and is a cluster study that includes a study scope with elements of both a system impact study and facilities study. A Class Year is a group of projects seeking to connect to the New York State Transmission System or Distribution System that have all met comparable milestones in the NYISO's interconnection process.<sup>2</sup> The NYISO has taken steps to deter speculative projects from entering the Class Year by increasing study deposits and adding regulatory milestone requirements. However, the NYISO has not seen a corresponding decrease in projects entering the queue or progressing to the Class Year Study, where such deposits are significant.<sup>3</sup> In fact, Class Year sizes have almost doubled each year for the past three Class Year Studies.
18. Once the group of projects for a particular Class Year is determined, the NYISO must: (i) build the modeling cases, (ii) determine the POI configuration for the applicable group of projects (which may need to address issues not identified in the individual assessment of POIs in system impact studies), (iii) conduct the steady-state analysis, short circuit analysis, transfer limit analysis, stability analysis, and deliverability assessment, and (iv) identify any necessary system upgrades and deliverability upgrades. Several of these

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<sup>2</sup> See OATT Section 25.6.2.3. Large Facilities must meet two milestones to be eligible to be included in a Class Year Study: 1) an Operating Committee-approved System Reliability Impact Study, and 2) satisfaction of an applicable regulatory milestone in accordance with Section 25.6.2.3.1 of the NYISO OATT.

<sup>3</sup> To enter the NYISO's clustered facilities study – the Class Year Study – the financial requirements are a \$100,000 study deposit plus, if an applicable regulatory milestone has not been satisfied, an additional deposit of \$100,000 + 3000/MW). (NYISO OATT Attach. S Section 25.5.9.1, Attach. X Section 30.8.1).

tasks happen in parallel throughout the Class Year Study in order to make the process as efficient as possible.

19. The amount of time it takes to complete the Class Year Study is dependent on the number of projects in the Class Year, and the complexity of the system upgrades needed to accommodate the proposed projects. For example, Class Year 2019 had a total of 38 projects seeking Energy Resource Interconnection Service (“ERIS”) and Capacity Resource Interconnection Service (“CRIS”), and it took the NYISO 18 months to complete the clustered study. Class Year 2021 had a total of 54 projects seeking ERIS and CRIS, and it took the NYISO 22 months to complete the study.
20. The Class Year Study involves several key tasks that must be completed. Table 2 below details these key tasks. It is important to note that the Class Year tasks are not completed serially. The NYISO works on many of these tasks in parallel, while some tasks are dependent on the completion of others.

**Table 2: Task List Table for Class Year Studies**

<b>Task No.</b>	<b>Task Description</b>
1	Build (a) Class Year steady-state, short circuit, and stability base cases (ATBA [pre-project] /ATRA [post-project] cases) for ERIS, (b) Class Year deliverability base cases (ATBA-D and ATRA-D cases) for CRIS (NRIS), and (c) create auxiliary study files
2	Perform Part 1 Design Studies: (a) review and, if necessary, re-create the conceptual breaker-level one-line diagram to accommodate a group of projects that are sharing the same POI including scenarios where projects could reject their cost allocations, (b) perform the physical feasibility assessment and, if necessary, re-create the conceptual breaker one-line diagram, and (c) provide upgrade cost and construction timing estimation
Part 2 Studies – All tasks described below	
3	Create ATBA/ATRA transfer cases and perform the thermal and voltage transfer limit analyses, and if applicable, identify and design System Upgrade Facilities (“SUF”) including cost and construction timing estimation
4	Perform bus flow analysis, and, if applicable, identify and design SUF including cost and construction timing estimation

5	Perform short circuit analysis including individual breaker analysis, and, if applicable, identify and design SUF including cost and construction timing estimation
6	Perform steady-state analysis (N-0, N-1, N-1-1, and N-1-1-0) and, if applicable, include the PAR impact analysis, the voltage deviation analysis, the reactive power capability analysis, extreme contingency assessment, and, if applicable, identify and design SUF including cost and construction timing estimation
7	Perform local stability analysis and, if applicable, include the stability transfer analysis. If applicable, identify and design SUF including cost and construction timing estimation
8	Perform NPCC/NYSRC A-10 (BPS) Testing – build applicable stability and steady-state test base cases to conduct the analysis, and, if applicable, identify and design SUF including cost and construction timing estimation
9	Perform sub-synchronous torsional interaction screening analysis
10	Deliverability assessment: CRIS transfer at different location (if applicable), Highway “no harm” test, Highway “net capacity” test, Other Interface “no harm” test, and Byway, and, if applicable, identify and design System Deliverability Upgrades (“SDU”) including cost and construction timing estimation
11	Perform headroom calculation and cost allocations
12	Complete Part 1 Design Studies
13	Complete Part 2 Studies – all applicable analytical assessments described above
14	Complete Draft MIS Report – ERIS report
15	Complete Draft NYISO Deliverability Interconnection Standard (DIS) Report – CRIS/NRIS report
16	Present Draft Reports to stakeholders
17	Present Draft Report to stakeholder Operating Committee
18	Decision Period
19	Revise reports based on SUF/SDU cost allocation acceptance/rejection from Interconnection Customers
20	Reiterate the Decision Period until all projects accept or all projects reject their SUF/SDU cost allocations

21. It is important to note that Stakeholder engagement is a key tenet of the NYISO’s interconnection process, as it provides stakeholders with transparency and the opportunity to review the results of critical reliability-based evaluations. If forced to complete the study process within a timeline that does not fully reflect the time

necessary for these important actions, the NYISO would likely have to eliminate this valuable review and approval process.

22. This concludes my affidavit.

## ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. I verify under penalty of perjury that the foregoing is true and correct.



Thinh T. Nguyen  
August 28, 2023



## **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 28th day of August 2023.

/s/ Stephanie Amann

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